

# **Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2004 (No. 1) 2004 No. 214**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 2004 No. 214**

Issued by the Authority of the Parliamentary Secretary to the Minister for Health and Ageing

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

*Australian Radiation Protection and Nuclear Safety Amendment Regulations 2004 (No. 1)*  
*Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2004 (No. 1)*

Subsection 85(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 6(1) 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 Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The statutory office of the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is created under section 14 of the Act. The CEO is responsible for achieving the object of the Act which is to protect the health and safety of people and to protect the environment from the harmful effect of radiation.

In 2003, the CEO of the ARPANSA commissioned a review of the amount of application fees and licence charges payable under the Act and the Licence Charges Act respectively. The review was conducted by external consultants (Ernst and Young) and found that ARPANSA would need to increase all application fees and licence charges by an identified percentage in order to maintain the full cost recovery basis of the regulatory function carried out by the CEO of ARPANSA.

The purpose of the Regulations is to implement the review's recommendation by increasing the application fee for certain licences and the annual licence charges issued under the Act and the Licence Charges Act by the Commonwealth's Wage Cost Index for 2003-04 and 2004-05 (approximately 5 per cent).

*Australian Radiation Protection and Nuclear Safety Amendment Regulations 2004 (No. 1)*

Under the 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 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 Act provides that the Chief Executive Officer (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 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 Principal Regulations).

The Regulations increase application fees prescribed under the Act. This is an overall increase of approximately 5 per cent to all application fees set out in Schedule 3A (facility licence application fees - nuclear installations); Schedule 3B (facility licence applications fees - prescribed radiation facilities) and Part 2 of Schedule 3C (Source Licence application fees) of the Principal Regulations. These application fees were last adjusted in 2000.

In addition, the amendments to Part 2 of Schedule 3C and regulation 40D of the Principal Regulations ensure that applications seeking authorisation for use of multiple categories of controlled material or controlled apparatus in multiple locations are charged the correct fee. The correct fee is the sum of the fees that attach to sources in the "same location" which is defined in the Act as within a 5km radius.

The Regulations also increase the amount of application fees set out in Items 9, 16 and 17 of Schedule 3A of the Principal Regulations by an amount of \$150,000. These items relate to application fees for:

- operating a controlled facility being a nuclear reactor for research or production of nuclear materials for industrial and medical use and with a maximum thermal power of 1 megawatt or more;
- preparing a site for a controlled facility being a nuclear waste storage or disposal facility that is designed to contain waste;
- constructing a controlled facility. being a nuclear waste storage or disposal facility that is designed to contain waste.

The amount of \$150,000 by which the proposed Regulations increase the application fee relating to these items represents:

- (a) the costs of the public submission process (which is prescribed by subregulation 40(3) and paragraph 41(3)(g) of the Principal Regulations); and
- (b) the engagement of an international peer review team (to assist the CEO take into account international best practice in radiation protection and nuclear safety as prescribed by the Act.)

These application fees have not been adjusted since the Principal Regulations were made in 1999.

*Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2004 (No. 1).*

Under the Licence Charges Act a person who is a holder of a source licence or a facility licence issued under the Act at any time during a financial year is liable to pay a charge for the licence for that year. The amount of a source licence charge or a facility licence charge is an amount

prescribed by the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000* (the Licence Charges Regulations).

The Regulations increase the amount of an annual licence charge that is payable in relation to each facility licence and source licence issued by the CEO of ARPANSA under the Licence Charges Act.

The Regulations provide for an overall increase of approximately 5 per cent to:

- the amount of a licence charge relating to a facility licence authorizing conduct for a nuclear installation in Schedule 1 to the Principal Regulations;
- the amount of a licence charge in relation to a facility licence authorizing conduct for a prescribed radiation facility in Schedule 2 to the Principal Regulations; and
- the amount of annual licence charges for a source licence authorizing dealings with sources in Parts 2 and 3 of Schedule 3 to the Principal Regulations.

The Regulations also amend subregulation 6(2) of the Licence Charges Regulations to ensure that source licences that authorise dealings with single or multiple categories of sources in multiple locations are charged the correct annual licence charge ie the sum of the annual licence charges that attach to sources in the "same location" which is defined in the Act as within a 5km radius.

Details of the Regulations are provided in the [Attachment](#).

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commence on the date of their notification in the *Gazette*.

## ATTACHMENT A

### **DETAILS OF THE *AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AMENDMENT REGULATIONS 2004 (NO. 1)***

Regulation 1 names the regulations as the *Australian Radiation Protection and Nuclear Safety Amendment Regulations 2004 (No. 1)*

Regulation 2 provides that the regulations commence on the date of their notification in the *Gazette*.

Regulation 3 would provide for Schedule 1 to amend the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the Principal Regulations).

#### **Schedule 1 - Amendments**

##### **Item [1]**

This item would amend subregulation 40D(2) to simplify the description of the manner of calculating the licence application fee payable by an applicant for a source licence. In the instance of controlled apparatus or controlled material being in the same location and the controlled apparatus or controlled material being in the same Group (set out in Part 1 of Schedule 3C) the amount of the fee payable would be the amount mentioned in column 3 of Part 2 of Schedule 3C that relates to the number of controlled apparatus or controlled material from that Group.

Example 1: An applicant submits a licence application for a source licence authorising it to deal with 6 baggage inspection x-ray units. The apparatus is within Group 1 in Part 1 of Schedule 3C. The number of apparatus falls within Item 2 paragraph (a) in Part 2 of Schedule 3C. Given the Group and the number of apparatus licensed, the amount of the annual licence charge would be the sum mentioned in column 3 of Part 2 of Schedule 3C of the Amendment Regulations as specified in Item 2, paragraph (a) \$1,365.

In the instance of the controlled apparatus or controlled material being from 2 or more Groups then the amount of the application fee would be the sum of the amounts mentioned in column 3 of Part 2 of Schedule 3C that relate to the number of controlled apparatus or controlled materials from each Group.

Example 2: An applicant submits a licence application for a source licence authorising it to deal with 6 baggage inspection x-ray units and 5 sealed sources for calibration purposes of activity of more than 40MBq. The 6 baggage inspection x-ray units fall within Group 1 of Part 1 of Schedule 3C. The 5 sealed sources for calibration purposes of activity of more than 40MBq fall within Group 2 of Part I of Schedule 3C. The number of baggage inspection x-ray units falls within Item 2(a) of Part 2 of Schedule 3C and the number of sealed sources for calibration purposes of activity of more than 40MBq falls within Item 2(b) of Part 2 of Schedule 3C. Given the Groups and number of licensed apparatus the total of the annual licence charge would be \$5,565 being \$1,365 for the baggage inspection x-ray units and \$4,200 for the sealed sources calibration purposes of activity of more than 40MBq.

In the instance of the controlled material or controlled apparatus being at 2 or more locations, the application fee would be the sum of the amounts mentioned in column 3 of Part 2 in Schedule 3C that relate to the number of controlled apparatus or controlled material from each Group that the applicant applies to deal with in each location.

Example 3: An applicant submits a licence application for a source licence to deal with 12 baggage inspection x-ray units with 6 units located at Location A and the other 6 units located at

Location B. The application fee for each location would be \$1,365. The total application fee payable by the applicant would be the sum of these two amounts ie \$1,365 plus \$1,365 giving a total of \$2,600.

## **Items [2] to [6]**

These items would give effect to the proposed increase of fees by approximately five per cent to maintain the cost-recovery basis of the regulatory functions of the Australian Radiation Protection and Nuclear Safety Agency.

### **Item [2]**

This item would amend column 3 of Schedule 3A to prescribe the amount payable as an application fee for a facility licence that authorises a person to do things in relation to a nuclear installation. The new amounts would give effect to the proposed increase of approximately five per cent.

### **Item [3]**

This item would amend column 3 of Part 1, Schedule 3B, to prescribe the amount payable as an application fee for a facility licence that authorises a person to do things in relation to a prescribed radiation facility. The new amounts would give effect to the proposed increase of approximately five per cent.

### **Item [4]**

The new item would amend column 3 of Part 2, Schedule 3B, to prescribe the amount payable as an application fee for a facility licence that authorises the decommissioning, disposing or abandoning of a prescribed radiation facility that was formerly used as a nuclear or atomic weapons test site or a prescribed radiation facility that was formerly used for the mining, processing, use storage, management or disposal of radioactive ores. The new amounts would give effect to the proposed increase of approximately five per cent.

### **Item [5]**

This item would amend column 3 of Part 2, Schedule 3C, to prescribe the amount payable as an application fee for a facility licence that authorises dealing with controlled apparatus or controlled material at the same location according to the number of controlled apparatus or controlled material and Group classification. The new amounts would give effect to the proposed increase of approximately five per cent.

## ATTACHMENT B

### **DETAILS OF THE *PROPOSED AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY (LICENCE CHARGES) AMENDMENT REGULATIONS 2004 (NO. 1)***

Regulation 1 would name the regulations as the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2004 (No. 1)*

Regulation 2 would provide that the regulations commence on the date of their notification in the *Gazette*.

Regulation 3 would provide for Schedule 1 to amend the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000* (the Licence Charges Regulations).

#### **Schedule 1 - Amendments**

##### **Item [1]**

This item would amend subregulation 6(2) including to simplify the description of the manner of calculating the licence charges payable by a licence holder for a source licence. In the instance of the licensed controlled material or controlled apparatus being in the same location and being in the same Group (set out in Part 1 of Schedule 2), the amount of the charge payable is the amount mentioned in column 3 of Part 2 of Schedule 3 that relates to the number of controlled apparatus or controlled material from that Group.

Example 1: A licence holder is licensed to deal with 6 baggage inspection x-ray units. The apparatus is within Group 1 in Part 1 of Schedule 3. The number of apparatus falls within Item 2(a) in Part 2 of Schedule 3. Given the Group and the number of apparatus licensed, the amount of the annual licence charge would be the sum mentioned in column 3 in Part 2 of Schedule 3 of \$1,365.

In the instance of the licensed controlled apparatus or controlled material being from 2 or more Groups then the amount of the annual charge would be the sum of the amounts mentioned in column 3 in Part 2 of Schedule 3 that relate to the number of controlled apparatus or controlled materials from each Group.

Example 2: A licence holder is licensed to deal with 6 baggage inspection x-ray units and 5 sealed sources for calibration purposes of activity of more than 40MBq. The 6 baggage inspection x-ray units fall within Group 1 in Part 1 of Schedule 3. The 5 sealed sources for calibration purposes of activity of more than 40MBq fall within Group 2 in Part 1 of Schedule 3. The number of baggage inspection x-ray units falls within Item 2(a) in Part 2 of Schedule 3 and the number of sealed sources for calibration purposes of activity of more than 40MBq falls within Item 2(b) in Part 2 of Schedule 3. Given the Groups and number of licensed apparatus the total of the annual licence charge would be \$5,565 being \$1,365 for the baggage inspection x-ray units and \$4,200 for the sealed sources calibration purposes of activity of more than 40MBq.

In the instance of the licensed controlled material or controlled apparatus being at 2 or more locations, the annual licence charge is the sum of the amounts mentioned in column 3 of Part 2 in Schedule 3 that relate to the number of controlled apparatus or controlled material from each Group that persons are authorised to deal with in each location.

Example 3: A licence holder is licensed to deal with 12 baggage inspection x-ray units with 6 units located at Location A and the other 6 units located at Location B. The licence charge for each location is \$1,300. The total annual charge payable by the licence holder would be the sum of these two amounts ie \$1,365 plus \$1,365 giving a total of \$2,730.

## **Items [2] to [6]**

These items would give effect to the proposed increase of charges by approximately five per cent, to mention the cost recovery basis of the regulatory functions of the Australian Radiation Protection and Nuclear Safety Agency.

### **Item [2]**

This item would amend column 3 of Schedule 1 to prescribe an amount payable for an annual licence charge for a facility licence that authorises a person to do things in relation to a nuclear installation.

### **Item [3]**

This item would amend column 3 of Part 1, Schedule 2, to prescribe an amount payable for an annual licence charge for a facility licence that authorises a person to do things in relation to a prescribed radiation facility not mentioned in Schedule 2, Part 2.

### **Item [4]**

This item would amend column 3 of Part 1, Schedule 2, to prescribe an amount payable for an annual licence charge for a facility licence that authorises the decommissioning, disposing or abandoning of a prescribed radiation facility that was formerly used as a nuclear or atomic weapons test site or a prescribed radiation facility that was formerly used for the mining, processing, use storage, management or disposal of radioactive ores.

### **Item [5]**

This item would amend Part 2, Schedule 3, to prescribe the amount payable for an annual licence charge for licensed controlled apparatus or controlled material at the same location according to the number of controlled apparatus or controlled material and Group classification.

### **Item [6]**

This item would amend column 3 of Part 3, Schedule 3, to prescribe an amount payable for an annual licence charge for certain licence holders, being the Department of Defence, the Australian Nuclear Science and Technology Organisation and the Commonwealth Scientific and Industrial Research Organisation.