EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 101

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety Amendment Regulations 2010 (No. 1)

Subsection 85(1) of *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.

The Regulations amend the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the Principal Regulations) to increase the licence application fees charged by the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) by 14 per cent. The increase is the first by ARPANSA since 2004 and represent only a part of the 22 per cent actual cumulative wage cost increases from 2005 to 2009.

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 Principal Regulations.

Licence application fees are currently prescribed by regulations 40B, 40C and 40D and listed in Schedules 3A (Facility licence application fees – nuclear installations), 3B (Facility licence application fees – prescribed radiation facilities), and 3C (Source licence application fees) respectively of the Principal Regulations.

Details of the Regulations are in the Attachment.

ARPANSA undertook a preliminary assessment of the impact of the increase on businesses or individuals. The findings of the assessment were sent to the Office of Best Practice Regulation (OBPR). The OBPR examined ARPANSA's current licence fees and charges and the amount of fees and charges paid by licence holders in 2008-09 and confirmed that the increase has little or no impact on businesses or individuals and there is no need to submit a Regulatory Impact Statement or Business Cost Calculator report (OBPR Reference 11066). ARPANSA then notified its 35 licence holders of the increase and sought comments. Submissions were received from three licence holders, namely, the Australian Nuclear Science and Technology Organisation (ANSTO), the Commonwealth Scientific, Industrial and Research Organisation (CSIRO) and PETNET Australia Pty Ltd (an ANSTO subsidiary). CSIRO and PETNET agreed that ARPANSA should index its licence fees and charges, but CSIRO suggested that the adjustment should be by less than 10per cent. ANSTO called for a full review of ARPANSA's regulatory costs. This review will commence in 2010-11.

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 the day after they are registered on the Federal Register of Legislative Instruments.

ATTACHMENT

Details of the *Australian Radiation Protection and Nuclear Safety Amendment Regulations 2010 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Australian Radiation Protection and Nuclear Safety Amendment Regulations 2010 (No. 1).*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of *Australian Radiation Protection and Nuclear Safety Regulations 1999*

This regulation provides that the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the Principal Regulations) be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Schedule 3A

Schedule 3A lists the licence application fees for nuclear installations. The amendments in item 1 increases the application fee 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	$21,000 to $23,940
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	$131,250 to $149,625
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	$105,000 to $119,700
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) and with maximum thermal power of less than 1 megawatt	$52,500 to $59,850
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	$52,500 to $59,850

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	$105,000 to $119,700
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	$420,000 to $478,800
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	$105,000 to $119,700
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	$450,000 to $513,000
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	$105,000 to $119,700
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	$10,500 to $11,970
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	$47,250 to $53,865
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	$10,500 to $11,970
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	$47,250 to $53,865
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	$21,000 to $23,940
16.	Preparing a site for a controlled facility, being: (a) a nuclear waste storage facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	$250,000 to $285,000
17.	Constructing a controlled facility, being: (a) a nuclear waste storage facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	$300,000 to $342,000

18.	Possessing or controlling a controlled facility, being: (a) a nuclear waste storage facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	$10,500 to $11,970
19.	Operating a controlled facility, being: (a) a nuclear waste storage facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	$157,500 to $179,550
20.	De-commissioning, disposing of or abandoning a controlled facility, being: (a) a nuclear waste storage facility that formerly contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that formerly contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 8	$21,000 to $23,940
21.	Preparing a site for a controlled facility, being a facility to produce radioisotopes, that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	$52,500 to $59,850
22.	Constructing a controlled facility, being a facility to produce radioisotopes, that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	$105,000 to $119,700
23.	Possessing or controlling a controlled facility, being a facility producing radioisotopes and containing controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	$10,500 to $11,970
24.	Operating a controlled facility, being a facility producing radioisotopes and containing controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	$94,500 to $107,730
25.	De-commissioning, disposing of, or abandoning a controlled facility, being a facility that formerly produced radioisotopes and contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 11	$21,000 to $23,940

Item [2] – Schedule 3B, Part 1

Schedule 3B, Part 1 lists the facility licence application fees for prescribed radiation facilities. The amendments in item 2 increases the application fee 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	$9,450 to $10,773
2.	Particle accelerator capable of producing neutrons	$9,450 to $10,773
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	$9,450 to $10,773
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	$9,450 to $10,773
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	$9,450 to $10,773
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	$9,450 to $10,773
7.	Facility for the production, processing, use, storage, management or disposal of unsealed sources, for which the result worked out using the steps mentioned in subregulation 6 (2) is greater than 10^6	$18,900 to $21,546
8.	Facility for the production, processing, use, storage, management or disposal of sealed sources, for which the result worked out using the steps mentioned in subregulation 6 (2) is greater than 10^9	$18,900 to $21,546

Item [3] – Schedule 3B, Part 2

Schedule 3B, Part 2 lists the facility licence application fees for certain activities in respect of prescribed radiation facilities. The amendments in item 3 increases the application fee for each of the following things to be done under the licence as described below:

Item	Description	Fee
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	$31,500 to $35,910
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	$21,000 to $23,940
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	$31,500 to $35,910
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	$21,000 to $23,940

Item [4] – Schedule 3C, Part 2

For purposes of source licence application fees, 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 3C, Part 1. Schedule 3C, Part 2 lists source licence application fees according to the number of controlled material or controlled apparatus from each group that will be in the same location and which is covered by the same licence application. The amendments in item 4 increases the licence application fees 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	 $525 to $599 $2,100 to $2,394 $6,300 to $7,182
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	 $1,365 to $1,556 $4,200 to $4,788 $12,600 to $14,364
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	 $2,625 to $2,993 $7,896 to $9,001 $23,100 to $26,334