

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 51**

#### *Australian Radiation Protection and Nuclear Safety Act 1998*

#### *Australian Radiation Protection and Nuclear Safety Amendment Regulations 2011 (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 3.4 per cent.

The increase is to adjust ARPANSA's licence application fees 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 licence application fees were last increased in May 2010.

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 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. The Regulations increase the licence application fees by 3.4 per cent.

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 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 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 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 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 increase 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	\$23,940 to \$24,754
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	\$149,625 to \$154,712
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	\$119,700 to \$123,770
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	\$59,850 to \$61,885
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	\$59,850 to \$61,885

Item	Description	Fees
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	\$119,700 to \$123,770
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	\$478,800 to \$495,079
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	\$119,700 to \$123,770
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	\$513,000 to \$530,442
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	\$119,700 to \$123,770
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	\$11,970 to \$12,377
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	\$53,865 to \$55,696
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	\$11,970 to \$12,377
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	\$53,865 to \$55,696
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	\$23,940 to \$24,754
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	\$285,000 to \$294,690
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	\$342,000 to \$353,628

Item	Description	Fees
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	\$11,970 to \$12,377
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	\$179,550 to \$185,655
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	\$23,940 to \$24,754
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	\$59,850 to \$61,885
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	\$119,700 to \$123,770
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	\$11,970 to \$12,377
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	\$107,730 to \$111,393
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	\$23,940 to \$24,754

**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 increase 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	\$10,773 to \$11,139
2.	Particle accelerator capable of producing neutrons	\$10,773 to \$11,139
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 unsealed sources, for which the result worked out using the steps mentioned in subregulation 6 (2) is greater than $10^6$	\$21,546 to \$22,279
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 $10^9$	\$21,546 to \$22,279

**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 increase 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	\$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 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 increase 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	\$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