

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 44

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety Amendment Regulation 2012 (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 regulation amends 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 four per cent on 1 July 2012.

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 2011. The licence application fees were last increased in July 2011.

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, an application for a facility or source licence must be in a form approved by the CEO and accompanied by such application fee as is prescribed in the Principal Regulations. The fees are listed in Schedule 3A (Facility licence application fees for nuclear installations), Schedule 3B (Facility licence application fees for prescribed radiation facilities), and Schedule 3C (Source licence application fees) to the Principal Regulations. The regulation increases these licence application fees by four per cent.

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

The Office of Best Practice Regulation has informed ARPANSA that regulatory amendments to index ARPANSA's licence application fees and annual licence charges by the Labour Price Index are machinery in nature and a regulatory impact statement is not required. As such, no consultation was undertaken as, under section 18 of the *Legislative Instruments Act 2003*, consultation is unnecessary or inappropriate where an instrument is of a minor or machinery nature and does not substantially alter existing arrangements.

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

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on 1 July 2012.

Authority: Subsection 85(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Radiation Protection and Nuclear Safety Amendment Regulation 2012 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The legislative instrument amends the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (Principal Regulations) in order to increase the licence application fees prescribed in Schedule 3A, Schedule 3B and Schedule 3C to the Principal Regulations. The increase by four per cent, which will take effect on 1 July 2012, is to index the licence application fees in line with the Labour Price Index (excluding bonuses) as at 30 September 2011.

These amendments do not make any substantive change to the Principal Regulations.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Catherine King
Parliamentary Secretary for Health and Ageing

Details of the *Australian Radiation Protection and Nuclear Safety Amendment Regulation 2012 (No. 1)***Section 1 – Name of regulation**

This section provides that the title of the regulation is the *Australian Radiation Protection and Nuclear Safety Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides for the regulation to commence on 1 July 2012.

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

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

Schedule 1 – Amendment**Item [1] – Amendments**

Licence application fees are listed in Schedule 3A, Schedule 3B and Schedule 3C to the Principal Regulations. The amendments in item 1 increase the application fees in each Schedule as follows:

Schedule 3A

Schedule 3A lists the licence application fees for nuclear installations. The amendments 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	24,754 to 25,744
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	154,712 to 160,900
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	123,770 to 128,721
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	61,885 to 64,360

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	61,885 to 64,360
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	123,770 to 128,721
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	495,079 to 514,882
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	123,770 to 128,721
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	530,442 to 551,660
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	123,770 to 128,721
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	12,377 to 12,872
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	55,696 to 57,924
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	12,377 to 12,872
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	55,696 to 57,924
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	24,754 to 25,744
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	294,690 to 306,478

Item	Description	Fees (\$)
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	353,628 to 367,773
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	12,377 to 12,872
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	185,655 to 193,081
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	24,754 to 25,744
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	61,885 to 64,360
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	123,770 to 128,721
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	12,377 to 12,872
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	111,393 to 115,849
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	24,754 to 25,744

Schedule 3B, Part 1

Schedule 3B, Part 1 lists the facility licence application fees for prescribed radiation facilities. The amendments 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 mega electron volt (MeV)	11,139 to 11,585
2.	Particle accelerator capable of producing neutrons	11,139 to 11,585
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	11,139 to 11,585
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	11,139 to 11,585
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	11,139 to 11,585
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	11,139 to 11,585
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	22,279 to 23,170
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	22,279 to 23,170

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 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	37,131 to 38,616
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	24,754 to 25,744
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	37,131 to 38,616
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	24,754 to 25,744

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 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	619 to 644 2,475 to 2,574 7,426 to 7,723
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	1,609 to 1,673 4,951 to 5,149 14,852 to 15,446
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	3,095 to 3,219 9,307 to 9,679 27,229 to 28,318