EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 45

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

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

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 2011. The annual licence charges were last increased in July 2011.

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 ARPANS 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 an application for a facility or source 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 a facility or source licence, at any time during a financial year, is liable to pay a charge for the licence for that year. The amounts of these annual licence charges are prescribed in the Principal Regulations. The annual licence

charges are listed in Schedule 1 (Facility licence annual charges – nuclear installations), Schedule 2 (Facility licence annual charges – prescribed radiation facilities) and Schedule 3 (Source licence annual charges) to the Principal Regulations. The regulation increases these annual licence charges 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: Section 6 of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) 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 (Licence Charges) 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 (Licence Charges) Regulations 2000* (Principal Regulations) in order to increase the annual licence charges prescribed in Schedule 1, Schedule 2 and Schedule 3 to the Principal Regulations. The increase by four per cent, which will take effect on 1 July 2012, is to index the annual licence charges 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

ATTACHMENT

Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) 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 (Licence Charges) 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 (Licence Charges) Regulations 2000*

This section 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] – Amendments

Annual licence charges are listed in Schedule 1, Schedule 2 and Schedule 3 to the Principal Regulations. The amendments in item 1 increase the annual licence charges in each Schedule as follows:

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	21,660 to 22,526
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	54,150 to 56,316
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	21,660 to 22,526

Item	Description	Fees ($)
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	108,299 to 112,631
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	54,150 to 56,316
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	43,319 to 45,052
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	108,299 to 112,631
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	108,299 to 112,631
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	833,899 to 867,255
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	216,597 to 225,261
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	10,830 to 11,263
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	21,660 to 22,526
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	10,830 to 11,263
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	54,150 to 56,316
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	21,660 to 22,526
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	10,830 to 11,263

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	21,660 to 22,526
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	10,830 to 11,263
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	54,150 to 56,316
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	21,660 to 22,526
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	21,660 to 22,526
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	54,150 to 56,316
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	21,660 to 22,526
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	86,639 to 90,105
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	54,150 to 56,316

Schedule 2, Part 1

Schedule 2, Part 1 lists the annual licence charges for facility licences for prescribed radiation facilities. The amendments 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 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

Item	Description	Fees ($)
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 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	22,279 to 23,170
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	22,279 to 23,170
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	22,279 to 23,170

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 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	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 3, Part 2

For purposes of annual licence charges for source licences, 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 the annual licence charges for source licences 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 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	 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

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 increase the annual licence charges for each licence holder as described below:

1.	Department of Defence	715,389 to 744,005
2.	Australian Nuclear Science and Technology Organisation	238,629 to 248,174
3.	Commonwealth Scientific and Industrial Research Organisation	238,629 to 248,174