

EXPLANATORY STATEMENT

Select Legislative Instrument No. 78, 2014

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety Regulations 1999

*Australian Radiation Protection and Nuclear Safety Amendment (2014 Measures No. 1)
Regulation 2014*

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.

Under the Act, 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. A ‘controlled person’ is a Commonwealth entity, Commonwealth contractor or person in a prescribed Commonwealth place (the Regulations currently prescribe only one place within the Lucas Heights Science and Technology Centre in Sydney. That place houses a company called Silex Systems Ltd, which is regulated by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) for its activities in relation to the laser enrichment of non-nuclear material). The types of conduct that are prohibited include the construction or operation of a controlled facility and the decommissioning of 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. An example of a controlled material is Technetium-99, which is commonly used in nuclear medicine and an example of a controlled apparatus is an X-ray machine.

Subsection 32(1) of the Act provides that the CEO may issue a facility licence to a controlled person authorising that controlled person to undertake an otherwise prohibited action. Subsection 33(1) of the Act provides that the CEO may issue a source licence to a controlled person authorising that controlled person to deal with a controlled apparatus or a controlled material.

Under section 34 of 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 *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the ARPANS 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 ARPANS Regulations.

The Regulation amends the ARPANS Regulations to increase the licence application fees collected by the Chief Executive Officer (CEO) of ARPANSA by 2.6 per cent on 1 July 2014.

The increase is to adjust ARPANSA's licence application fees to recover increased labour costs. It is in line with the Australian Bureau of Statistics' Wage Price Index (excluding bonuses) as at 30 September 2013. The licence application fees were last adjusted on 1 July 2013.

The Regulation also makes other minor amendments to update references to standards and guidelines mentioned in the ARPANS Regulations and to correct certain errors and omissions.

The Regulation is being brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2014 Measures No. 1) Regulation 2014*.

Details of the Regulation are set out in the Attachment.

Consultation

The Office of Best Practice Regulation (OBPR) has exempted ARPANSA from the need to prepare a regulatory impact statement (RIS) for the amendments (OBPR ID: 16527). The OBPR agreed that the amendments are either minor or machinery in nature or the impact on businesses and the not for profit sector is low to nil. This is because, with the exception of the publicly listed SILEX Ltd, ARPANSA regulates only Commonwealth government departments and entities and therefore any impact on competition is unlikely.

No consultation was undertaken for the indexation increase by 2.6 per cent and for the minor amendments to update references to standards and guidelines and correct certain errors and omissions as, under section 18 of the *Legislative Instruments Act 2003*, consultation is unnecessary or inappropriate where amendments are minor or machinery in nature.

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 2014.

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

ATTACHMENT**Details of the Australian Radiation Protection and Nuclear Safety Amendment (2014 Measures No. 1) Regulation 2014****Section 1 – Name of regulation**

This section provides that the name of the regulation is the *Australian Radiation Protection and Nuclear Safety Amendment (2014 Measures No. 1) Regulation 2014*.

Section 2 – Commencement

This section provides for the regulation to commence on 1 July 2014.

Section 3 – Authority

This section provides that the regulation is made under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Section 4 – Schedules(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item [1] – Subregulation 3(1)

This amendment deletes all the words after “certain words and expressions” in order to remove references to signpost definitions.

Item [2] – Subregulation 3(1) (example)

This amendment repeals the example of a signpost definition as it is incorrect.

Item [3] – Subparagraphs 4(2)(a)(viii) and (ix)

Regulation 4 prescribes controlled apparatus that require a licence under the Act. Subparagraphs 4(2)(a)(viii) and (ix) prescribe laser products and optical fibre communication systems based on criteria specified in two Australian/New Zealand Standards. This amendment updates the references to those standards to the most recent versions.

Item [4] – Subregulation 55B(1)

Regulation 55B provides for the pro-rating of annual charges levied by the CEO of ARPANSA. Subregulation 55B(1) provides that the CEO of ARPANSA may pro-rate the amount of the annual charge for a facility or source licence if the licence is not held for the whole of a financial year. This amendment improves the drafting of this subregulation by replacing the words “pro-rate” with the phrase “make a pro-rata adjustment of”.

Item [5] – Subregulations 55B(2) and (3)

Subregulation 55B(2) refers to regulation 55D for the formula to calculate the pro-rata adjustment of annual licence charges where a facility or source licence is not held for the whole of a financial year. Subregulation 55B(3) provides that regulation 55B applies to annual charges unpaid in part or full at the commencement of regulation 55B and for each financial year thereafter. This amendment updates and simplifies regulation 55B by repealing subregulations 55B(2) and (3) and substituting these with the formula to calculate the pro-rata adjustment where a facility or source licence is not held for the whole of a financial year.

Item [6] – Subregulation 55C(3)

Regulation 55C provides for the refunding of a part of an annual charge levied by the CEO of ARPANSA where a facility or source licence is only held for a part of a financial year. Subregulation 55C(3) refers to regulation 55D for the formula to calculate the amount of the refund. This amendment repeals subregulation 55C(3) and substitutes it with the formula to calculate the amount of the refund.

Item [7] – Regulation 55D

This amendment repeals regulation 55D as the formulae to calculate the pro-rata adjustment of an annual licence charge and the formula to calculate the amount of a refund of an annual licence charge where a facility or source licence is not held for the whole of a financial year is now provided for in subregulations 55B(2) and 55C(3) respectively.

Item [8] - Schedule 1 (table items 4 and 5)

A source licence is required for dealing with non-ionising radiation apparatus if it is of a kind prescribed in Regulation 4 of the Regulations and the apparatus produces non-ionizing radiation that could lead to a person being exposed to radiation levels in excess of the exposure limits mentioned in Schedule 1. Items 4 and 5 of Schedule 1 specify the exposure limits for laser products and products that emit optical radiation (intense light sources) respectively. This amendment updates the references mentioned in items 4 and 5 with the most recent version of the relevant Australian/New Zealand Standards.

Item [9] - Schedule 1 (table item 7)

Item 7 of Schedule 1 specifies the exposure limits for non-ionising radiation from static magnetic fields. This amendment updates the reference mentioned in item 7 with the most recent version of the guidelines published by the International Commission on Non-Ionising Radiation Protection.

Item [10] – Part 1 of Schedule 2 (table item 7)

Part 1 of Schedule 2 lists the controlled apparatus that are exempted from the need to be licensed under the Act. This amendment clarifies that the exemption applies only to those controlled apparatus listed in item 7 and no other controlled apparatus or controlled material. The amendment also adds a new exempt item, namely arc welding equipment.

Item [11] –Amendments of listed provisions—Schedule 3A

Schedule 3A lists the fees that must accompany an application for a facility licence for particular activities in relation to certain nuclear installations. These amendments increase the application fees in Schedule 3A by 2.6 per cent as follows:

Table Item	Thing authorised to be done by licence	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	26 594 to 27 285
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	166 210 to 170 531
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	132 969 to 136 426
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	66 484 to 68 212
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	66 484 to 68 212
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	132 969 to 136 426
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	531 873 to 545 701

Table Item	Thing authorised to be done by licence	Fees (\$)
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	132 969 136 426
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	569 865 to 584 681
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	132 969 to 136 426
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	13 297 to 13 642
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	59 835 to 61 390
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	13 297 to 13 642
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	59 835 to 61 390
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	26 594 to 27 285
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	316 592 to 324 823
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	379 910 to 389 787
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	13 297 to 13 642

Table Item	Thing authorised to be done by licence	Fees (\$)
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	199 453 to 204 638
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	26 594 to 27 285
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	66 484 to 68 212
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	132 969 to 136 426
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	13 297 to 13 642
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	119 672 to 122 783
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	26 594 to 27 285

Item [12] – Amendments of listed provisions—Part 1 of Schedule 3B

Part 1 of Schedule 3B lists the fees that must accompany an application for a facility licence for particular kinds of prescribed radiation facilities. These amendments increase the application fees in Part 1 of Schedule 3B by 2.6 per cent as follows:

Table Item	Kind of prescribed radiation facility	Fees (\$)
1.	Particle accelerator with a beam energy of more than 1 mega electron volt (MeV)	11 967 to 12 278
2.	Particle accelerator capable of producing neutrons	11 967 to 12 278
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	11 967 to 12 278
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	11 967 to 12 278

Table Item	Kind of prescribed radiation facility	Fees (\$)
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	11 967 to 12 278
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	11 967 to 12 278

Item [13] – Part 1 of Schedule 3B (table items 7 and 8)

Schedule 3B lists the facility licence application fees for prescribed radiation facilities. Item 7 provides for the application fees for a facility for the production, processing, use, storage, management or disposal of unsealed sources. Item 8 provides for the application fee for such a facility but with only sealed sources. This amendment repeals items 7 and 8 and substitutes them with just one item 7 that provides for a facility with either unsealed or sealed sources or a facility with both unsealed and sealed sources. The amendment also provides that the application fee for a facility covered by item 7 is \$24 557.

Item [14] – Amendments of listed provisions—Part 2 of Schedule 3B

Part 2 of Schedule 3B lists the fees that must accompany an application for a facility licence for particular activities in relation to certain prescribed radiation facilities. These amendments increase the application fees in Part 2 of Schedule 3B by 2.6 per cent as follows:

Table Item	Thing authorised to be done by licence	Fee (\$)
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	39 890 to 40 927
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	26 594 to 27 285
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	39 890 to 40 927
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	26 594 to 27 285

Item [15] – Part 1 of Schedule 3C (table items 23 and 24)

Schedule 3C provides for the application fees for source licences. The quantum of the fees is specified in Part 2 of Schedule 3C based on the number of sources at a location and the level of risk posed by those sources. The sources are listed in Part 1 of Schedule 3C and are divided into three groups - Group 1 and Group 2 and Group 3 - in ascending order of risk to people and the environment. Items 23 and 24 specify laser products and optical fibre communications system products respectively based on certain emission and hazard levels in the relevant Australian/New Zealand Standards. This amendment updates items 23 and 24 with the most recent versions of the relevant Australian/New Zealand Standards.

The amendment also inserts two new items 24A and 24B to provide for the inclusion of any new sealed radioactive source or non-ionising radiation apparatus respectively which are not mentioned in another item of Schedule 3C. This is in order to accommodate new sources that are introduced into the market, which are not specified anywhere else in Schedule 3C and which will attract the application fee for a Group 1 source.

Item [16] – Part 1 of Schedule 3C (after table item 37)

This amendment inserts two new items 37A and 37B to provide for the inclusion of any new sealed radioactive source or non-ionising radiation apparatus respectively which are not mentioned in another item of Schedule 3C. This is in order to accommodate new sources that are introduced into the market, which are not specified anywhere else in Schedule 3C and which will attract the application fee for a Group 2 source.

Item [17] – Part 1 of Schedule 3C (at the end of table items 41 and 45)

Items 41 and 45 provide for the inclusion of any new sealed radioactive source or non-ionising radiation apparatus which are not mentioned in another item of Schedule 3C. This is in order to accommodate new sources that are introduced into the market, which are not specified anywhere else in Schedule 3C and which will attract the application fee for a Group 3 source. This amendment amends items 41 and 45 to include objective criteria to determine the source or controlled apparatus that will be covered by those items.

Item [18] – Amendments of listed provisions—Part 2 of Schedule 3C

Part 2 of Schedule 3C lists the application fees that must accompany an application for a source licence to deal with particular kinds of controlled apparatus or controlled material. 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. These amendments increase the application fees in Part 2 of Schedule 3C by 2.6 per cent as follows:

Table Item	Number of controlled apparatus or controlled materials in the same location to be dealt with under the application	Fees (\$)
1.	For less than 4 controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	665 to 682 2 659 to 2 728 7 978 to 8 185
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	1 728 to 1 772 5 319 to 5 457 15 956 to 16 370
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	3 325 to 3 411 9 998 to 10 257 29 252 to 30 012

Item [19] –Schedule 6 (item 8)

Schedule 6 prescribes the radiation protection legislation of the States and Territories that are inapplicable to controlled persons. This amendment amends item 8 of Schedule 6 to update the short title of the Northern Territory's primary radiation protection legislation.

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 (2014 Measures No. 1) Regulation 2014

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* (the Regulations). The amendments increase the licence application fees prescribed in Schedule 3A, Schedule 3B and Schedule 3C to the Regulations by 2.6 per cent. The increase is to index the fees in line with the Australian Bureau of Statistics' Wage Price Index (excluding bonuses) for the public sector as at 30 September 2013. The increase will take effect on 1 July 2014. The instrument also updates outdated references to technical standards and guidelines, for example, the Australian/New Zealand Standards and corrects some errors and omissions.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms for the following reasons:

- The amendments increase the licence application fees paid by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for authorisations to deal with radiation equipment or radioactive sources or to engage in activities in relation to radiation facilities and nuclear installations.
- Other amendments are technical or machinery in nature, namely, amendments to provisions relating to the calculation of the application fees and amendments that update references to technical standards and guidelines, for example, Australian/New Zealand Standards.

Conclusion

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

Fiona Nash
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