EXPLANATORY STATEMENT

Select Legislative Instrument No. 77, 2014

Australian Radiation Protection and Nuclear Safety Act 1998

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

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

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.

Under the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS 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 *Australian Radiation Protection and Nuclear Safety Regulations 1999* (ARPANS 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 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. 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 ARPANS Act provides that the CEO of ARPANSA may issue a facility licence to a controlled person authorising that controlled person to undertake an 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 application fee as is prescribed in the ARPANS Regulations.

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 *Australian Radiation Protection and Nuclear*

Safety (Licence Charges) Regulations 2000 (Licence Charges Regulations). The licence charges are prescribed 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) of the Licence Charges Regulations.

The Regulation amends the Licence Charges Regulations to increase the annual licence charges levied by the Chief Executive Officer (CEO) of ARPANSA by 2.6 per cent. This increase is to adjust ARPANSA's annual licence charges to recover increased labour costs and is in line with the Australian Bureau of Statistics' Wage Price Index (excluding bonuses) as at 30 September 2013.

The Regulation also increases the licence charges for certain source licences by varying amounts that were determined from a recent cost recovery review. The review found that licence holders with source licences were paying less annual charges than what they ought to. These licence holders will now pay more to reflect the actual cost of monitoring the compliance of these licence holders with the ARPANS Act and ARPANS Regulations. These increases are the first step in a phased approach to ensuring that all licence holders pay the true cost of compliance and enforcement activities. These increases, which are explained in Item 8 of the Attachment, will also take effect on 1 July 2014.

The annual licence charges were last adjusted on 1 July 2013.

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

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

Details of the Regulation are set out in the Attachment.

The Licence Charges 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.

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. ARPANSA consulted its licence holders about the cost recovery increases to minimise cross subsidies on three occasions in 2013, including written advice and request for feedback. No licence holder found fault with the analysis or argued to maintain the cross subsidy situation. Some licence holders requested ARPANSA phase in the changes and this is the first in a planned phased approach to cost recovery adjustments.

Authority: Section 6 of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*

ATTACHMENT

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

Item [1] – Amendments of listed provisions—Schedule 1

Schedule 1 of the Licence Charges Regulations lists the annual licence charges that must be paid for facility licences that authorise specific activities that may be undertaken at or in relation to particular kinds of nuclear installations. This amendment increases the existing annual licence charges listed in the schedule by 2.6% as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
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	23 269 to 23 873
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	58 174 to 59 686

Table Item	Thing authorised to be done by licence	Charge ($)
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	23 269 to 23 873
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	116 348 to 119 373
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	58 174 to 59 686
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	46 539 to 47 749
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	116 348 to 119 373
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	116 348 to 119 373
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	895 874 to 919 166
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	232 695 to 238 745
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	11 635 to 11 937
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	23 269 to 23 873
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	11 635 to 11 937
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	58 174 to 59 686

Table Item	Thing authorised to be done by licence	Charge ($)
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	23 269 to 23 873
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	11 635 to 11 937
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	23 269 to 23 873
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	11 635 to 11 937
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	58 174 to 59 686
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.	23 269 to 23 873
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	23 269 to 23 873
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	58 174 to 59 686
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	23 269 to 23 873
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	93 078 to 95 498
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	58 174 to 59 686

Item [2] – Amendments of listed provisions—Part 1 of Schedule 2

Part 1 of Schedule 2 to the Licence Charges Regulations lists the annual licence charges for particular kinds of prescribed radiation facilities. This amendment increases the existing annual licence charges listed in the schedule by 2.6% as follows:

Table Item	Kind of prescribed radiation facility	Charge ($)
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
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 [3] – Part 1 of Schedule 2 (table items 7 to 9)

Schedule 2 lists the annual licence charges for facility licences for certain kinds of prescribed radiation facilities. Item 7 provides the annual licence charge for a facility for the production, processing, use, storage, management or disposal of sealed sources. Item 8 provides the annual licence charge for such a facility but with unsealed sources only. Item 9 provides the annual licence charge for a facility with mixed sealed and unsealed sources. This amendment repeals items 7, 8 and 9 and substitute them with one item 7 that provides the relevant fee for a facility with either unsealed or sealed sources or a facility with both unsealed and sealed sources. The amendment also provides that the annual licence charge for a facility covered by item 7 is $24 557.

Item [4] – Amendments of listed provisions—Part 2 of Schedule 2

Part 2 of Schedule 2 to the Licence Charges Regulations lists the annual licence charges for a facility licences for particular activities in relation to certain prescribed radiation facilities. This amendment increases the existing annual licence charges listed in the schedule by 2.6% as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
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

Table Item	Thing authorised to be done by licence	Charge ($)
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 [5] – Part 1 of Schedule 3 (table items 23 and 24)

Schedule 3 provides the annual licence charges for source licences. The quantum of the charges is specified in Part 2 of the Schedule 3 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 3 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 the Schedule 3. This is in order to accommodate new sources that are introduced into the market, which are not specified anywhere else in Schedule 3 and which will attract the annual licence charge for a Group 1 source.

Item [6] – Part 1 of Schedule 3 (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 3. This is in order to accommodate new sources that are introduced into the market, which are not specified anywhere else in Schedule 3 and which will attract the annual licence charge for a Group 2 source.

Item [7] – Part 1 of Schedule 3 (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 respectively which are not mentioned in another item of Schedule 3. This is in order to accommodate new sources that are introduced into the market, which are not specified anywhere else in Schedule 3 and which will attract the annual licence charge 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 [8] – Amendments of listed provisions—Part 2 of Schedule 3

Part 2 of Schedule 3 lists the annual licence charges for source licences to deal with particular kinds of controlled apparatus or controlled material. For this purpose, 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 annual licence charges in the schedule as follows:

Table Item	Number of controlled apparatus or controlled materials in the same location that persons are authorised to deal with under the licence	Existing Charge ($)	*Indexation (+2.6%)*	*Cost recovery increase*	New annual charge ($)
1	For less than 4 controlled apparatus or controlled materials from:				
	Group 1	665	*+17*	*+439*	1 121
	Group 2	2 659	*+69*	*+1 757*	4 485
	Group 3	7 978	*+207*	*+5 267*	13 452
2	For more than 3, but less than 11, controlled apparatus or controlled materials from:				
	Group 1	1 728	*+44*	*+1 141*	2 913
	Group 2	5 319	*+138*	*+3 511*	8 968
	Group 3	15 956	*+414*	*+10 531*	26 901
3	For 11 or more controlled apparatus or controlled materials from:				
	Group 1	3 325	*+86*	*+2 195*	5 606
	Group 2	9 998	*+259*	*+6 599*	16 856
	Group 3	29 252	*+760*	*+19 306*	49 318

Item [9] – Amendments of listed provisions—Part 3 of Schedule 3

Part 3 of Schedule 3 lists the annual licence charges for three particular licence holders. This amendment increases the existing annual licence charges listed in the schedule as follows:

Table Item	Charges for certain licence holders	Existing Charge ($)	*Indexation (+2.6%)*	*Cost recovery increase*	New annual charge ($)
1	Department of Defence	768 557	*+19 982*	*Nil*	788 539
2	Australian Nuclear Science and Technology Organisation	256 364	*+6 665*	*Nil*	263 029
3	Commonwealth Scientific and Industrial Research Organisation	256 364	*+6 665*	*+26 678*	289 707

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 (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 (Licence Charges) Regulations 2000* (Licence Charges Regulations). The amendment increases the annual licence charges prescribed in Schedule 1, Schedule 2 and Schedule 3 to the Licence Charges Regulations to adjust for wage cost increases (indexation increase) and to reduce cross subsidisation among licence holders (cost recovery increase). The indexation increase, by 2.6 per cent, increases the charges in line with the Australian Bureau of Statistics' Wage Price Index (excluding bonuses) for the public sector as at 30 September 2013. The cost recovery increases are by varying amounts based on the results of a recent cost recovery review. The increases 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 also 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 annual licence charges paid by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for licences that authorise dealing with radiation equipment or radioactive sources or certain 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 annual licence charges 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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