

EXPLANATORY STATEMENT

Select Legislative Instrument No. 74, 2015

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 (2015 Measures No. 1) Regulation 2015

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 or a Commonwealth contractor. 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. Under subsection 33(1) of the ARPANS Act, 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 the ARPANS Act, an application for a facility or source licence must be accompanied by such application fee as is prescribed in the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the ARPANS Regulations). The Licence Charges Act provides for the payment of an annual licence charge by each licence holder.

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 (for nuclear installations), Schedule 2 (for prescribed radiation facilities) and Schedule 3 (for source licences) of the Licence Charges Regulations.

The Regulation amends the Licence Charges Regulations to increase all of these annual licence charges by 2.7 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 2014. This increase will take effect on 1 July 2015. The annual licence charges were last adjusted on 1 July 2014.

The Regulation also make other minor amendments to improve the drafting of the provisions.

The Regulation is being brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety Amendment (2015 Measures No. 1) Regulation 2015*.

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 2015.

Consultation

The Office of Best Practice Regulation (OBPR) has exempted ARPANSA from the need to prepare a regulatory impact statement for the Regulation (OBPR ID: 18079) as the amendments are either minor or machinery in nature or the impact on businesses and not for profit sector is low to nil. This is because, with the exception of the publicly-listed SILEX Ltd, which is in a prescribed Commonwealth place, 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 2.7% and for the other minor changes to correct and update the Regulations as, under section 18 of the *Legislative Instruments Act 2003*, consultation is unnecessary or inappropriate where amendments are minor or machinery in nature.

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 (2015 Measures No. 1) Regulation 2015*****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 (2015 Measures No. 1) Regulation 2015*.

Section 2 – Commencement

This section provides for the regulation to commence on 1 July 2015.

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**Part 1—Amendments of charge amounts**

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 has a table that sets out the amounts of 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 amounts of the annual licence charges listed in the table by 2.7% 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	23 873 to 24 517

Table Item	Thing authorised to be done by licence	Charge (\$)
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	59 686 to 61 297
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	23 873 to 24 517
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	119 373 to 122 596
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	59 686 to 61 297
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	47 749 to 49 038
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	119 373 to 122 596
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	119 373 to 122 596
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	919 166 to 943 983
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	238 745 to 245 191
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	11 937 to 12 259
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	23 873 to 24 517

Table Item	Thing authorised to be done by licence	Charge (\$)
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	1 937 to 12 259
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	59 686 to 61 297
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	23 873 to 24 517
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	11 937 to 12 259
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	23 873 to 24 517
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	11 937 to 12 259
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	59 686 to 61 297
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.	23 873 to 24 517
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	23 873 to 24 517
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	59 686 to 61 297
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	23 873 to 24 517
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	95 498 to 98 076

Table Item	Thing authorised to be done by licence	Charge (\$)
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	59 686 to 61 297

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

Part 1 of Schedule 2 to the Licence Charges Regulations has a table that sets out the annual licence charges for particular kinds of prescribed radiation facilities. This amendment increases the annual licence charges listed in the table by 2.7% 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)	12 278 to 12 609
2.	Particle accelerator capable of producing neutrons	12 278 to 12 609
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	12 278 to 12 609
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	12 278 to 12 609
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	12 278 to 12 609
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	12 278 to 12 609
7.	Facility for the production, processing, use, storage, management or disposal of: (a) unsealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^6 ; or (b) sealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^9	24 557 to 25 220

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

Part 2 of Schedule 2 to the Licence Charges Regulations has a table that sets out the annual licence charges for facility licences for certain activities in relation to prescribed radiation facilities. The amendment increases the annual licence charges in the table by 2.7% 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	40 927 to 42 032
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	27 285 to 28 021

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	40 927 to 42 032
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	27 285 to 28 021

Item [4] Amendments of listed provisions—Part 2 of Schedule 3

Part 2 of Schedule 3 has a table that sets out 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 licence charges in the table by 2.7% 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 (\$)	New annual charge (\$)
1	For less than 4 controlled apparatus or controlled materials from:		
	Group 1	1 121	1 151
	Group 2	4 485	4 606
	Group 3	13 452	13 815
2	For more than 3, but less than 11, controlled apparatus or controlled materials from:		
	Group 1	2 913	2 991
	Group 2	8 968	9 210
	Group 3	26 901	27 627
3	For 11 or more controlled apparatus or controlled materials from:		
	Group 1	5 606	5 757
	Group 2	16 856	17 311
	Group 3	49 318	50 649

Item [5] Amendments of listed provisions—Part 3 of Schedule 3

Part 3 of Schedule 3 has a table that sets out the annual licence charges for three particular licence holders. This amendment increases the licence charges listed in the table by 2.7% as follows:

Table Item	Charges for certain licence holders	Existing Charge (\$)	New annual charge (\$)
1	Department of Defence	788 539	809 829
2	Australian Nuclear Science and Technology Organisation	263 029	270 130
3	Commonwealth Scientific and Industrial Research Organisation	289 707	297 529

Part 2—Technical amendments

Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000

Item [6] and Item [7] Subregulations 4(1) and (2)

Subregulations 4(1) and (2) provide for the amount of the annual licence charge for a nuclear installation by referring to “column 2” and “column 3” of the table in Schedule 1. The amendments make an editorial change to the way in which the table is referred to and is consequential to the amendment at item [18] below.

Items [8] to [11] Subregulation 5(1), Paragraphs 5(2)(a) and (b), and subregulation 5(3)

Regulation 5 sets out the annual licence charge that apply for a facility licence that authorises a person to undertake certain activities in relation to prescribed radiation facilities. These activities, which are spelled out in subsection 30(1) of the Act are to prepare a site for, construct, possess or control, operate, or de-commission, dispose of or abandon a prescribed radiation facility. The applicable charges are those in the tables in Parts 1 and Parts 2 of Schedule 2. The amendments make editorial changes to the way in which subregulation 5(1) and paragraphs 5(2)(a) and (b) refer to the relevant items in the tables in Schedule 2. The amendments are consequential to the amendments at items [20] and [23] below.

The amendments to subregulation 5(3) are also editorial changes to spell out more clearly that where a facility licence authorises more than one of the activities in subsection 30(1) of the Act in relation to a prescribed radiation facility, the fee that is payable is as if each one of those activities had been the subject of a separate application.

Items [12] to [15] Subregulation 6(1), subparagraphs 6(2)(a)(i) and (ii) and paragraph 6(2)(b)

Regulation 6 sets out the annual licence charge for a source licence. The applicable charges are provided for in subregulation 6(1), subparagraphs 6(2)(a)(i) and (ii) and paragraph 6(2)(b) through references to the tables in Parts 1 and 2 of Schedule 3. The amendments make editorial changes to the way in which the tables are referred to. The amendments are consequential to the amendments at items [25], [27] and [28] below.

Item [16] Subregulation 6(2) (note)

The amendment is consequential to the amendment at Item [5] of Schedule 1 to the *Australian Radiation Protection and Nuclear Safety Amendment (2015 Measures No. 1) Regulation 2015*, which repeals regulation 3 of the ARPANS Regulations, which refers to the Dictionary at the end of those Regulations and replaces it with a list of definitions in Regulation 3.

Item [17] Subregulation 6(3)

Subregulation 6(3) sets out annual licence charges for three licence holders who each pay a certain amount of annual licence charge every year for all their sources and refers to a table in Part 3 of Schedule 3 that identifies the licence holders and specifies the amounts they are required to pay. The amendment makes an editorial change to the way in which the table is referred to and is consequential to the amendment at item [30] below.

Items [18] Schedule 1 (before the table) and Item [19] Schedule 1 (table headings)

Schedule 1 has a table that sets out the amount of the annual licence charge for a facility licence that authorises a person to do a thing mentioned in an item in the table in relation to a nuclear installation. The amendment at item [18] inserts a clause that describes what the table in Schedule 1 sets out to do. The amendment at item [19] inserts new table and column headings.

Items [20] to [22] Part 1 of Schedule 2 (after the heading), and Part 1 of Schedule 2 (table, headings) and Part 1 of Schedule 2 (note)

Part 1 of Schedule 2 has a table that sets out the amount of annual licence charge for a facility licence that authorises a person to prepare a site for, construct, possess or control, operate, decommission, dispose of or abandon certain types of prescribed radiation facilities. The amendment at item [20] inserts a clause that describes what the table in Part 1 of Schedule 2 sets out to do. The amendment at item [21] inserts new table and column headings.

The note to the table sets out the amount of the annual licence charge when the licence authorises two or more of the activities that may be authorised. The amendment at item [22] makes an editorial change to clarify that the amount of the annual licence charge in such a case is the sum of the amounts of the annual licence charges that would have been payable if separate licences had been issued for each of those activities.

Items [23] Part 2 of Schedule 2 (after the heading) and Item [24] Part 2 of Schedule 2 (table, headings)

Part 2 of Schedule 2 has a table that sets out the amount of annual licence charge for a facility licence that authorises a person to decommission, dispose of, or abandon a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site or formerly used for the mining, processing, use, storage, management or disposal of radioactive ores. The amendment at item [23] inserts a clause that describes what the table sets out to do and the amendment at item [24] inserts new table and column headings.

Item [25] Part 1 of Schedule 3 (after the heading) and Item [26] Part 1 of Schedule 3 (table, headings)

Part 1 of Schedule 3 has a table that sets out kinds of controlled apparatus and controlled materials under three separate groups based on their hazard for the purpose of determining the amount of the annual licence charge for a source licence. The amendment at item [25] inserts a clause that describes what the table sets out to do. The amendment at item [26] inserts a table heading.

Item [27] Part 1 of Schedule 3 (table items 6,7,8,30,31,42 and 43)

Part 1 of Schedule 3 has a table that sets out kinds of controlled apparatus and controlled materials under three separate groups based on their hazard for the purpose of determining the amount of the annual licence charge for a source licence. Table items 6, 7, 8, 30, 31, 42 and 43 refer to certain activity values in the table at column 4 of Part 2 of Schedule 2 to the ARPANS Regulations. The amendment makes an editorial change to the way in which the activity values are referred to in each table item. The amendments are consequential to the amendment at

item [81] of the *Australian Radiation Protection and Nuclear Safety Amendment (2015 Measures No. 1) Regulation 2015*.

Item [28] Part 2 of Schedule 3 (after the heading) and Item [29] Part 2 of Schedule 3 (table, headings)

Part 2 of Schedule 3 has a table that sets out the amount of an annual licence charge for a source licence depending on the number of controlled apparatus or controlled materials at the same location from each of the groups in the table in Part 1 of Schedule 3. The amendment at item [28] inserts a clause that describes what the table sets out to do. The amendment at item [29] inserts new table and column headings.

Item [30] Part 3 of Schedule 3 (after the heading) and Item [31] Part 3 of Schedule 3 (table, headings)

Part 3 of Schedule 3 has a table that sets out the amount of annual licence charges for three licence holders who pay a certain amount every year for all their sources. The amendment at item [30] inserts a clause that describes what the table sets out to do. The amendment at Item [31] inserts new table and column headings.

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 (2015 Measures No. 1) Regulation 2015

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 by 2.7 per cent. The increase is to adjust for wage cost increases and is in line with the Australian Bureau of Statistics' Wage Price Index (excluding bonuses) for the public sector as at 30 September 2014. The increases will take effect on 1 July 2015. The instrument also makes minor changes that are machinery in nature.

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.
- The amendments improve the provisions by bringing them in line with current drafting conventions.

Conclusion

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

Fiona Nash
Assistant Minister for Health