# EXPLANATORY STATEMENT

Subject: *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 (2016 Measures No. 1) Regulation 2016*

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation.

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 to increase annual licence charges by 2.7 per cent and to make associated technical amendments. It also makes consequential amendments resulting from recent changes to the *Australian Radiation Protection and Nuclear Safety Act 1998.*

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 Chief Executive Officer (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 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 ARPANS Act, an application for a facility or source licence must be accompanied by such 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 (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 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) for the public sector as at 30 September 2015. This increase will take effect on 1 July 2016. The annual licence charges were last adjusted on 1 July 2015.

The amendments also reduce and fix the annual licence charges payable by three licence holders for their source and facility licences, who among them account for more than 90% of ARPANSA’s receipts from annual licence charges. The licence holders are the Australian Nuclear Science and Technology Organisation, the Department of Defence and the Commonwealth Scientific and Industrial Research Organisation. The reduction follows a cost recovery review in 2015 to assess the actual cost of regulating the activities of these licence holders.

The regulation also makes other consequential amendments of an editorial nature arising from amendments to the ARPANS Act.

The Regulation is being brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety Amendment (2016 Measures No. 1) Regulation 2016*.

Details of the Regulation are set out in the Attachment.

The Licence Charges Act does notspecify any condition that needs to be met before the power to make the proposed Regulation may be exercised.

The Regulation would be a legislative instrument for the purposes of the *Legislation Act 2003.*

The Regulation would commence on 1 July 2016.

*Consultation*

The Office of Best Practice Regulation (OBPR) has exempted ARPANSA from the need to prepare a Regulatory Impact Statement (RIS) for the Regulation (OBPR ID: 20115) as the amendments are either minor or machinery in nature and the impact on businesses and not for profit sector is low to nil. No consultation was undertaken as, under section 18 of the *Legislative Instruments Act 2003*, consultation is unnecessary 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 proposed *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2016 Measures No. 1) Regulation 2016***

**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 (2016 Measures No. 1) Regulation 2016.*

**Section 2 – Commencement**

This section provides for the regulation to commence on 1 July 2016.

**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 ($) |
| --- | --- | --- |
|  | Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt | 24 517 to 25 178 |
|  | 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 | 61 297 to 62 952 |
|  | 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 | 24 517 to  25 178 |
|  | 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 | 122 596 to  125 906 |
|  | De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of less than 1 megawatt | 61 297 to  62 952 |
|  | 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 | 49 038 to  50 362 |
|  | 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 | 122 596 to 125 906 |
|  | 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 | 122 596 to 125 906 |
|  | 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 | 943 983 to 969 470 |
|  | 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 | 245 191 to 251 811 |
|  | Preparing a site for a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above | 12 259 to 12 589 |
|  | 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 | 24 517 to 25 178 |
|  | Possessing or controlling a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above | 12 259 to 12 589 |
|  | 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 | 61 297 to 62 952 |
|  | De-commissioning, disposing of or abandoning a controlled facility, being a plant that was used for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above | 24 517 to 25 178 |
|  | 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 | 12 259 to 12 589 |
|  | 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 | 24 517 to 25 178 |
|  | 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 | 12 259 to 12 589 |
|  | 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 | 61 297 to 62 952 |
|  | 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. | 24 517 to 25 178 |
|  | 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 | 24 517 to 25 178 |
|  | 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 | 61 297 to 62 952 |
|  | 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 | 24 517 to 25 178 |
|  | 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 | 98 076 to 100 724 |
|  | 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 | 61 297 to 62 952 |

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 ($) | |
| --- | --- | --- | --- |
|  | Particle accelerator with a beam energy of more than 1 mega electron volt (MeV) | | 12 609 to 12 949 |
|  | Particle accelerator capable of producing neutrons | | 12 609 to 12 949 |
|  | Irradiator containing more than 1015 becquerel (Bq) of a controlled material | | 12 278 to 12 609 |
|  | Irradiator containing more than 1013 Bq of a controlled material but not including shielding as an integral part of its construction | | 12 609 to 12 949 |
|  | Irradiator containing more than 1013 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 | | 12 609 to 12 949 |
|  | Irradiator containing more than 1013 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 | | 12 609 to 12 949 |
|  | 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 106; or  (b) sealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 109 | | 25 220 to 25 900 |

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 ($) | |
| --- | --- | --- | --- |
|  | De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site | | 42 032 to 43 166 |
|  | Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site | | 28 021 to 28 777 |
|  | 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 | | 42 032 to 43 166 |
|  | 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 | | 28 021 to 28 177 |

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 | 1 151 | 1 182 |
|  | Group 2 | 4 606 | 4 730 |
|  | Group 3 | 13 815 | 14 188 |
| 2 | For more than 3, but less than 11, controlled apparatus or controlled materials from: |  |  |
|  | Group 1 | 2 991 | 3 071 |
|  | Group 2 | 9 210 | 9 458 |
|  | Group 3 | 27 627 | 28 372 |
| 3 | For 11 or more controlled apparatus or controlled materials from: |  |  |
|  | Group 1 | 5 757 | 5 912 |
|  | Group 2 | 17 311 | 17 778 |
|  | Group 3 | 50 649 | 52 016 |

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 decreases the licence charges listed in the table as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Charges for certain licence holders | Existing Charge ($) | New annual charge ($) |
| 1 | Department of Defence | 809 829 | 381 463 |
| 2 | Australian Nuclear Science and Technology Organisation | 270 130 | 159 632 |
| 3 | Commonwealth Scientific and Industrial Research Organisation | 297 529 | 296 512 |

**Part 2—Other amendments**

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

Item [6] Subregulation 3(1)

The proposed amendment would insert a new clause that describes a designated licence holder, who will pay a fixed annual charge for all their facility licences.

Item [7] Subregulation 4[1] and Item [9] subregulation 5(1)

Subregulation 4(1) provides for the amount of the annual licence charge for a nuclear installation by referring to items in the table in Schedule 1. Subregulation 5(1) sets out the amount of the annual licence charge for a prescribed radiation facility by referring to items in the table in Schedule 2. The amendments clarify that these do not apply to designated licence holders and is consequential to the proposed amendment in item [6] above.

Item [8] At the end of subregulation 4(1) and Item [10] At the end of subregulation 5(1)

The amendment inserts a note that would clarify that the amount of the charge for a financial year for all facility licences held by a designated licence holder is set out in Schedule 2b.

Item [11] After regulation 5

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 amendment inserts a new regulation 5A and a new regulation 5B. The regulation 5A provides that the amount of the charge for a financial year for a facility licence in relation to a controlled facility that is a prescribed legacy site is prescribed in the table in clause 1 of Schedule 2A. The regulation 5B provides that the annual charges payable by a designated licence holder for all facility licences held by that licence holder for the year is prescribed in the table in clause 1 of Schedule 2B. The regulation 5A follows a cost recovery review undertaken in 2015 and the regulation 5B is consequential to amendments made to the ARPANS Act last year.

Item [12] Clause 1 of Schedule 1, Item [13] Clause 1 of Schedule 2, and Item [14] Clause 2 of Schedule 2

Clause 1 of Schedule 1, Clause 1 of Schedule 2, and Clause 2 of Schedule 2 set out the annual charges for facility licences for nuclear installations and prescribed radiation facilities. The amendments clarify that these clauses do not apply to designated licence holders and is consequential to the amendment in item [6] above.

Item [15] After Schedule 2

Schedule 2 sets out the annual charges for facility licences for prescribed radiation facilities. The amendment inserts a new Schedule 2A with a table as shown below that sets out the amount of the charge for a financial year for a facility licence in relation to a controlled facility that is a prescribed legacy site. The amendment is consequential to the amendments made to the ARPANS Act last year.

| Facility licence annual charges—prescribed legacy sites | | | | |
| --- | --- | --- | --- | --- |
| Item | Thing authorised to be done by licence | | Amount ($) | |
| 1 | Possess or control a controlled facility that is a prescribed legacy site | 14 010 | |
| 2 | Remediate a controlled facility that is a prescribed legacy site | 210 163 | |
| 3 | Abandon a controlled facility that is a prescribed legacy site | 28 021 | |

The amendment also inserts a new Schedule 2B with a table as shown below that sets out the amount of the charge for a financial year for all facility licences held by a designated licence holder the year.

| Total facility licence annual charges—designated licence‑holders | | |
| --- | --- | --- |
| Item | Licence holder | Amount ($) |
| 1 | Australian Nuclear Science and Technology Organisation | 2 267 954 |
| 2 | Department of Defence | 276 051 |

Item [16] Amendments of listed provisions – Schedule 1

Clause 1 of 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 amendments to items 1 to 20 in the table replace references to ‘nuclear materials’ with ‘radioactive materials’ and references to ‘nuclear waste’ with ‘radioactive waste’. The amendments are consequential to amendments made to the ARPANS Act last year.

**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 (Licence Charges) Amendment (2016 Measures No. 1) Regulation 2016**

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 Regulation amends the Australian Radiation Protection and Nuclear Safety Regulations 1999 to increase the licence application fees by 2.7 per cent and to make other minor and consequential amendments resulting from recent changes to the *Australian Radiation Protection and Nuclear Safety Act 1998*.

**Human Rights Implications**

The amendments are compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights.

The amendments increase the licence application fees paid by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for licences 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 bring the provisions in line with current drafting convention, amendments to improve the clarity of provisions and definitions, updating of technical information.

**Conclusion**

This Bill is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

**The Hon. Ken Wyatt AM, Assistant Minister for Health and Aged Care**

**Parliamentary Secretary to the Minister for Health**