**EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Foreign Affairs

*Nuclear Non-Proliferation (Safeguards) Act 1987*

*Nuclear Non-Proliferation (Safeguards) Amendment (2017 Measures No. 1) Regulations 2017*

The *Nuclear Non-Proliferation (Safeguards) Act 1987* (the Act) gives effect to certain obligations that Australia has under international agreements on the peaceful use of nuclear material and facilities, including all of Australia’s bilateral nuclear cooperation agreements, as well as the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Physical Protection of Nuclear Material (Physical Protection Convention), and Australia’s agreements with the International Atomic Energy Agency.

Section 74 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, 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.

Section 70 of the Act provides that powers, discretions, duties or functions under the Act are to be exercised in accordance with specified international agreements identified in the Act, or prescribed in regulations.

The *Nuclear Non-Proliferation (Safeguards) Regulations 1987* (the Principal Regulations) list relevant agreements for the purposes of the Act. The purpose of *Nuclear Non‑Proliferation (Safeguards) Amendment (2017 Measures No. 1) Regulations 2017* was to update the list of prescribed international agreements by adding the following international agreements:

* *Agreement between the Government of Australia and the Government of the United Arab Emirates on Cooperation in the Peaceful Uses of Nuclear Energy*, date signed on behalf of Australia 31 July 2012.
* *Agreement between the Government of Australia and the Government of India on Cooperation in the Peaceful Uses of Nuclear Energy*, date signed on behalf of Australia 5 September 2014.
* *Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy*, date signed on behalf of Australia 31 March 2016.

Prescribing these international agreements brings them under the Safeguards Act, giving legal effect to Australia’s implementation of the agreements for actions such as processing the transfer of Australian obligated nuclear material (including Australian uranium ore concentrate) sold to the United Arab Emirates, India or Ukraine for nuclear fuel manufacture, use or storage.

The *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* imposes a charge on producers of uranium ore concentrates (the charge) under certain circumstances. Section 69A of the Act specifies that the charge is payable on 1 December each year and that the amount of the charge payable by a producer is $500,000 or an amount prescribed by the regulations, whichever is the lesser. The amount of the charge, expressed in cents per kilogram of uranium in the uranium ore concentrate produced, is set in the Principal Regulations.

The Regulations amend the Principal Regulations to be the amount of charge payable by a producer as the lesser of $500,000 or 13.1813 cents per kilogram of uranium in the uranium ore concentrates produced in the previous financial year. The rate was arrived at by apportioning Australian Safeguards and Non-Proliferation Office general expenses to work categories related to regulation of uranium mining and export and will apply to the 2016-17 financial year.

The charge has been reduced from the 2015-16 rate of 14.1715 cents per kilogram of uranium in uranium ore concentrates to 13.1813 cents per kilogram of uranium in uranium ore concentrates for 2016-17.

**Consultation and Regulatory Impact**

The then Office of Regulation Review advised on 18 January 2006 that as the direct effect on business is minor in nature a Regulation Impact Statement (RIS) is not mandatory, therefore an exception applies. The Office of Regulation Review also advised that subsequent amendments to the charge per kilogram to uranium producers will not require a RIS. The active uranium producers
in Australia were consulted on the revised rate for the charge payable in the 2017-18 financial year and were supportive of the decrease. Consultation and the regulatory impact of the three nuclear cooperation agreements was addressed during the process of seeking approval for signing the
treaties.

**Human Rights**

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Legislative Instrument does not engage any of the
applicable rights or freedoms described in the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, this Legislative Instrument is compatible with human rights.

**Commencement**

The Regulations will commence on the 1 December 2017, as required by the Act. Because the effect of the amendment to regulation 6 of the Nuclear Non-Proliferation (Safeguards) Regulations
1987 is beneficial, subsection 12(2) of the Legislation Act 2003 will not prevent the amendment applying retrospectively if there is a delay in registering the instrument.

**ATTACHMENT**

**Details of the proposed *Nuclear Non-Proliferation (Safeguards) Amendment (2017 Measures No. 1) Regulations 2017***

Section 1 - Name of Regulations

*This instrument is the Nuclear Non-Proliferation (Safeguards) Amendment (2017 Measures No. 1) Regulations 2017.*

Section 2 - Commencement

1. Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | 1 December 2017. | 1 December 2017 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

 (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 - Authority

This instrument is made under the *Nuclear Non Proliferation (Safeguards) Act 1987.*

Section 4 - Schedule(s)

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

Nuclear Non‑Proliferation (Safeguards) Regulations 1987

1 Paragraph 6(a)

Omit “14.1775”, substitute “13.1813”.

2 Regulation 7

Repeal the regulation, substitute:

7 Application of the *Nuclear Non‑Proliferation (Safeguards) Amendment (2017 Measures No. 1) Regulations 2017*

 The amendment of paragraph 6(a) made by the *Nuclear Non‑Proliferation (Safeguards) Amendment (2017 Measures No. 1) Regulations 2017* applies in relation to charge payable on 1 December in the 2017‑18 financial year and later financial years.

3 Schedule 1 (at the end of the table)

Add:

|  |  |  |
| --- | --- | --- |
| 25 | Agreement between the Government of Australia and the Government of the United Arab Emirates on Cooperation in the Peaceful Uses of Nuclear Energy | 31 July 2012 |
| 26 | Agreement between the Government of Australia and the Government of India on Cooperation in the Peaceful Uses of Nuclear Energy | 5 September 2014 |
| 27 | Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy | 31 March 2016 |