

EXPLANATORY STATEMENT

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 (2018 Measures No. 1) Regulations 2018

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

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998* (the Licence Charges Act) is an Act to impose charges on licences issued under the ARPANS Act and for related purposes.

Section 6 of 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 *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulations 2018* (the regulations) amend the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000* (Licence Charges Regulations) to:

- (1) increase the annual licence charges prescribed in the Licence Charges Regulations by 2.4 per cent, in line with the Australian Bureau of Statistics (ABS) annualised Wage Price Index (excluding bonuses) for the public sector as at 1 September 2017.
- (2) consolidate two items with identical annual licence charges relating to particle accelerators into a single item, and
- (3) update the publication details of an Australia/New Zealand Standard, which is incorporated by reference in the Licence Charges Regulations.

Under subsection 32(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act) the Chief Executive Officer (CEO) of ARPANSA may issue a facility licence to a controlled person to undertake certain actions, such as the construction or operation of or the decommissioning of a nuclear installation or a prescribed radiation facility. Subsection 33(1) provides that the CEO may issue a source licence to a controlled person authorising the controlled person to possess, control, use, operate or dispose of controlled apparatus or a controlled material. A 'controlled person' is a Commonwealth entity or a Commonwealth contractor. An example of controlled material is Technetium-99, which is commonly used in nuclear medicine and an example of a controlled apparatus is an X-ray machine.

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 Licence Charges Regulations. The annual

licence charges have been indexed every year since 2010 using ABS wage and labour price indices to recover increased labour costs.

The regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The regulations commenced on 1 July 2018. The increases to the annual licence charges took effect on 1 July 2018.

Details of the regulations are set out in the Attachment below.

The regulations were brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018*.

The Licence Charges Act does not specify any condition that needs to be met before the power to make the regulations may be exercised.

Consultation:

No consultation was undertaken among licence holders (all of whom are Commonwealth entities) as the amendments are machinery in nature and are done annually to ensure the Licence Charges Regulations are up-to-date. The Office of Best Practice Regulation (OBPR) exempted ARPANSA from the need to prepare a regulatory impact statement for the amendments (OBPR ID: 22587). The OBPR agreed that the amendments are machinery in nature and are not likely to result in any change to regulatory costs.

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 (2018 Measures No. 1) Regulations 2018*****Section 1 – Name**

This section provides that the name of the regulations is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2017 Measures No. 1) Regulations 2017*.

Section 2 – Commencement

This section provides for the regulations to commence on 1 July 2018.

Section 3 – Authority

This section provides that the regulations are 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

Clause 1 of 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. The proposed amendments would increase the amounts of the annual licence charges listed in the table by 2.4 per cent 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	25,757 to 26,375

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	64,399 to 65,944
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	25,757 to 26,375
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	128,801 to 131,892
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	64,399 to 65,944
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	51,520 to 52,756
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	128,801 to 131,892
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	128,801 to 131,892
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	991,767 to 1,015,569
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	257,602 to 263,784
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	12,878 to 13,187
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	25,757 to 26,375

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	12,878 to 13,187
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	64,399 to 65,944
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	25,757 to 26,375
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	12,878 to 13,187
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	25,757 to 26,375
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	12,878 to 13,187
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	64,399 to 65,944
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.	25,757 to 26,375
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	25,757 to 26,375
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	64,399 to 65,944
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	25,757 to 26,375
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	103,040 to 105,512

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	64,399 to 65,944

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

Clause 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. The proposed amendments would increase the annual licence charges listed in the table by 2.4 per cent as follows:

Table Item	Kind of prescribed radiation facility	Charge (\$)
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	13,246 to 13,563
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	13,246 to 13,563
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	13,246 to 13,563
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	13,246 to 13,563
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	26,495 to 27,130

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

Clause 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 proposed amendments would increase the annual licence charges in the table by 2.4 per cent 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	44,158 to 45,217
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	29,438 to 30,144
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	44,158 to 45,217

Table Item	Thing authorised to be done by licence	Charge (\$)
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	29,438 to 30,144

Item 4 Amendments of listed provisions—Schedule 2A

Clause 1 of Schedule 2A to the Licence Charges Regulations has a table that sets out the annual licence charges for facility licences for prescribed legacy sites. The proposed amendments would increase the annual licence charges in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Charge (\$)
1.	Possess or control a controlled facility that is a prescribed legacy site	14,332 to 14,573
2.	Remediate a controlled facility that is a prescribed legacy site	214,996 to 220,155
3.	Abandon a controlled facility that is a prescribed legacy site	28,665 to 29,352

Item 5 Amendments of listed provisions—Schedule 2B

Clause 1 of Schedule 2B to the Licence Charges Regulations has a table that sets out the annual licence charges for facility licences for designated licence holders. The proposed amendments would increase the annual licence charges in the table by 2.4 per cent as follows:

Table Item	Designated licence holder	Charge (\$)
1.	Australian Nuclear Science and Technology Organisation	2,320,116 to 2,375,798
2.	Department of Defence	282,400 to 289,177

Item 6 Amendments of listed provisions—Part 2 of Schedule 3

Clause 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. The proposed amendments would increase the licence charges in the table by 2.4 per cent 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	Charge (\$)
1	For less than 4 controlled apparatus or controlled materials from:	
	Group 1	1,209 to 1,238
	Group 2	4,838 to 4,954
	Group 3	14,514 to 14,862
2	For more than 3, but less than 11, controlled apparatus or controlled	

Table Item	Number of controlled apparatus or controlled materials in the same location that persons are authorised to deal with under the licence	Charge (\$)
	materials from:	
	Group 1	3,141 to 3,216
	Group 2	9,675 to 9,907
	Group 3	29,024 to 29,720
3	For 11 or more controlled apparatus or controlled materials from:	
	Group 1	6,047 to 6,192
	Group 2	18,186 to 18,622
	Group 3	53,212 to 54,489

Item 7 Amendments of listed provisions—Part 3 of Schedule 3

Clause 3 of Schedule 3 has a table that sets out the annual licence charges for three particular licence holders. The proposed amendments would increase the licence charges listed in the table by 2.4 per cent as follows:

Table Item	Licence holders	Charge (\$)
1	Department of Defence	390,236 to 399,601
2	Australian Nuclear Science and Technology Organisation	163,303 to 167,222
3	Commonwealth Scientific and Industrial Research Organisation	303,331 to 310,610

Part 2—Other amendments

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

Item 8 Clause 1 of Schedule 2 (table items 1 and 2)

Clause 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. The proposed amendments would repeal the references to table items 1 and 2 and replace them with a new table item 1 as follows:

Table Item	Kind of prescribed radiation facility	Charge (\$)
1.	Particle accelerator that: (a) has, or is capable of having, a beam energy greater than 1 MeV; or (b) can produce neutrons	13,563

Item 9 Clause 1 of Schedule 3 (table items 23 and 24, column headed “Controlled apparatus or controlled material”)

Table items 23 and 24 refer to an Australian/New Zealand Standard on optical fibre communication system. The proposed amendment would update the reference to the most recent version of the Standard. This Standard may be obtained from SAI Global (www.saiglobal.com).

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 (2018 Measures No. 1) Regulations 2018

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 Regulations amend the Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000 (Licence Charges Regulations) to increase annual licence charges by 2.4 per cent and to make other minor amendments.

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 annual licence charges paid by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for licences to deal with radiation apparatus or radioactive sources or to engage in activities in relation to radiation facilities and nuclear installations.

Other amendments are minor or machinery in nature, namely, amendments to update the publication details of an Australia/New Zealand Standard, which is incorporated by reference in the Licence Charges Regulations and an amendment to consolidate two references to a particle accelerator into one reference.

Conclusion

This Instrument 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.

Senator the Hon. Bridget McKenzie, Minister for Rural Health