EXPLANATORY STATEMENT

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

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2019

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* (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) provides for annual charges to be levied on holders of licences issued under the ARPANS Act.

Section 6 of 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 *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018* (Licence Charges Regulations) prescribe the annual licence charges to give effect to the Licence Charges Act.

Purpose

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2019* (the Regulations) amend the Licence Charges Regulations to adjust the annual licence charges to reflect the regulatory effort in accordance with a full cost recovery model and simplify the source charging regime.

Under the 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, prescribed radiation facility or a prescribed legacy site.

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.

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 licence charges are prescribed in Part 2 (Annual charge for facility licences) and Part 3 (Annual charge for source licences) of the Licence Charges Regulations.

The Regulations amend the Licence Charges Regulations to increase certain annual licence charges by 2% and adjust the remaining licence charges including the annual charges for licence holders held in certain names to reflect the regulatory effort in accordance with the implementation of a full cost recovery model.

The Regulations also specify the total annual facility licence charge payable by the Australian National University (ANU) for all facilities operated by the ANU and specify the annual source licence charge payable by the Australian Federal Police, Australian National University, Australian War Memorial and the National Measurement Institute for all sources held by each entity.

The Regulations also simplify the source charging regime to apply a uniform charge of $663 per source held by other licence holders.

Consultation

No consultation was undertaken among licence holders (all of whom are Commonwealth entities) as the amendments are considered minor and machinery in nature. 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: 22587).

Details of the Regulations are set out in the Attachment.

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

The Regulations commence on 1 July 2019.

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

ATTACHMENT A

Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2019*

Section 1 – Name of regulation

This section provides that the name of the regulations is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2019*.

Section 2 – Commencement

This section provides for the regulations to commence on 1 July 2019.

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 2018

Items [1] – [25] Amendments to section 7 - Facility licences for nuclear installations

Section 7 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 amount of the annual licence charges listed in the section 7 table by 2% as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
1.	Preparing a site for a nuclear reactor designed: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) to have maximum thermal power less than 1 megawatt	26,375 to 26,902
2.	Constructing a nuclear reactor designed: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) to have maximum thermal power less than 1 megawatt	65,944 to 67,263
3.	Possessing or controlling a nuclear reactor: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) with maximum thermal power less than 1 megawatt	26,375 to 26,902
4.	Operating a nuclear reactor: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) with maximum thermal power less than 1 megawatt	131,892 to 134,530
5.	Decommissioning, disposing of or abandoning a nuclear reactor that: (a) was used for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) had maximum thermal power less than 1 megawatt	65,944 to 67,263
6.	Preparing a site for a nuclear reactor designed: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) to have maximum thermal power at least 1 megawatt	52,756 to 53,811
7.	Constructing a nuclear reactor designed: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) to have maximum thermal power at least 1 megawatt	131,892 to 134,530

Table Item	Thing authorised to be done by licence	Charge ($)
8.	Possessing or controlling a nuclear reactor: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) with maximum thermal power at least 1 megawatt	131,892 to 134,530
9.	Operating a nuclear reactor: (a) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) with maximum thermal power at least 1 megawatt	1,015,569 to 1,035,880
10.	Decommissioning, disposing of or abandoning a nuclear reactor that: (a) was used for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and (b) had maximum thermal power at least 1 megawatt	263,784 to 269,060
11.	Preparing a site for a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	13,187 to 13,451
12.	Constructing a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	26,375 to 26,902
13.	Possessing or controlling a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	13,187 to 13,451
14.	Operating a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	65,944 to 67,263
15.	Decommissioning, disposing of or abandoning a plant that was used for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 10	26,375 to 26,902
16.	Preparing a site for: (a) a radioactive waste storage facility designed to contain controlled materials with an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or (b) a radioactive waste disposal facility designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations	13,187 to 13,451

Table Item	Thing authorised to be done by licence	Charge ($)
17.	Constructing: (a) a radioactive waste storage facility designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or (b) a radioactive waste disposal facility designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations	26,375 to 26,902
18.	Possessing or controlling: (a) a radioactive waste storage facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or (b) a radioactive waste disposal facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations	13,187 to 13,451
19.	Operating: (a) a radioactive waste storage facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or (b) a radioactive waste disposal facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations	65,944 to 67,263
20.	Decommissioning, disposing of or abandoning: (a) a radioactive waste storage facility that contained controlled materials and had an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or (b) a radioactive waste disposal facility that contained controlled materials and had an activity that was greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations	26,375 to 26,902
21.	Preparing a site for a facility to produce radioisotopes that is designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations	26,375 to 26,902

Table Item	Thing authorised to be done by licence	Charge ($)
22.	Constructing a facility to produce radioisotopes that is designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations	65,944 to 67,263
23.	Possessing or controlling a facility producing radioisotopes and containing controlled materials that has an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations	26,375 to 26,902
24.	Operating a facility producing radioisotopes and containing controlled materials that has an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations	105,512 to 107,622
25.	Decommissioning, disposing of or abandoning a facility that formerly produced radioisotopes and contained controlled materials and had an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations	65,944 to 67,263

Items [26] to [33] Amendments to section 8 – Facility licences for prescribed radiation facilities

Section 8 (2) of the Licence Charges Regulations has a table which sets out the annual charges for prescribed radiation facilities not formerly used for weapons tests or radioactive ores.

This amendment increases the annual licence charges listed in the table by 5.8% to reflect regulatory effort in accordance with the full cost recovery model 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 to 14,350
2.	Irradiator containing more than 10^{15} Bq of a controlled material	13,563 to 14,350

Table Item	Kind of prescribed radiation facility	Charge ($)
3.	Irradiator: (a) containing more than 10^{13} Bq of a controlled material; and (b) either: (i) not including shielding as an integral part of its construction; or (ii) including as an integral part of its construction shielding that does not prevent a person from being exposed to the source or does not shield a source during the operation of the irradiator	13,563 to 14,350
4.	Facility for the production, processing, use, storage, management or disposal of: (a) unsealed sources for which the result of the activity value division steps is greater than 10^{6}; or (b) sealed sources for which the result of the activity value division steps is greater than 10^{9}	27,130 to 28,704

Section 8 (3) of the Licence Charges Regulations has a table which sets out the annual charges for prescribed radiation facilities formerly used for weapons tests or radioactive ores.

This amendment increases the annual licence charges listed in the table by 5.8% to reflect regulatory effort in accordance with the full cost recovery model as follows:

Table Item	Kind of prescribed radiation facility	Charge ($)
1.	Decommissioning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site	45,217 to 47,840
2.	Disposing of or abandoning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site	30,144 to 31,892
3.	Decommissioning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores	45,217 to 47,840
4.	Disposing of or abandoning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores	30,144 to 31,892

Items [34] – [36] Amendments to section 9 - Facility licences for prescribed legacy sites

Section 9 of the Licence Charges Regulations has a table that sets out the annual charges for facility licences for prescribed legacy sites. This amendment increases the amount of the annual licence charges listed in the section 9 table by 2% as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
1.	Possessing or controlling a prescribed legacy site	14,573 to 14,864
2.	Remediating a prescribed legacy site	220,155 to 224,558
3.	Abandoning a prescribed legacy site	29,352 to 29,939

Item [37] Amendments to section 10 – Annual Charge for all facility licences held in certain names

Section 10 has a table that sets out the annual facility licence charges for three particular licence holders. This amendment adds Australian National University as a new named facility licence holder and adjusts the total annual charge for the Australian Nuclear Science and Technology Organisation and the Department of Defence to reflect regulatory effort in accordance with a full cost recovery model as follows:

Table Item	Charges for certain licence holders	Existing Charge ($)	New annual charge ($)
1.	Australian National University		43,050
2.	Australian Nuclear Science and Technology Organisation	2,375,798	3,033,464
3.	Department of Defence	289,177	194,107

Item [38] Amendments to sections 11 and 12 – Annual charge for source licences

This amendment simplifies the annual charging regime for source licences. The annual charge for source licences is calculated by multiplying $663 by the total number of controlled apparatus or controlled materials held by the licence holder.

Item [39] - Section 13 – Annual charge for all source licences held in certain names

Section 13 has a table that sets out the annual source licence charges for three particular licence holders. This amendment adds an additional four named source licence holders, Australian Federal Police, Australian National University, Australian War Memorial and the National Measurement Institute as new named source licence holders and adjusts the total annual charge for the Australian Nuclear Science and Technology Organisation, Commonwealth Scientific and Industrial Research Organisation and the Department of Defence to reflect regulatory effort in accordance with a full cost recovery model as follows:

Table Item	Charges for certain licence holders	Existing Charge ($)	New annual charge ($)
1.	Australian Federal Police		81,121
2.	Australian National University		142,947
3.	Australian Nuclear Science and Technology Organisation	167,222	213,512
4.	Australian War Memorial		25,567
5.	Commonwealth Scientific and Industrial Research Organisation	310,610	510,163
6.	Department of Defence	399,601	268,228
7.	National Measurement Institute		26,040

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) Regulations 2019

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 2018 to adjust the annual licence charges and the source charging regime.

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 adjust the annual licence charges payable 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.

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. Bridget McKenzie, Minister for Regional Services, Sport, Local Government and Decentralisation