

EXPLANATORY STATEMENT

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

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2020

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. To achieve the object of the ARPANS Act the CEO of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), issues licences to Commonwealth entities that deal with radiation equipment and material or undertake certain activities in relation to nuclear installations.

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. The Licence Charges Act provides that the holder of a facility or source licence, issued under the ARPANS Act, at any time during a financial year, is liable to pay a charge for the licence for that year under the Licence Charges Act. Licence Charges Regulations prescribe annual charge amounts for certain licence holders and for certain types of licences, such as an annual facility licence charge or an annual source licence charge. Licence charges reflect the Government's intention that regulation under the ARPANS Act is on a user pays basis and provides for a full cost recovery model to be maintained.

Purpose

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2019* (the Regulations) amends the Licence Charges Regulations to adjust the annual licence charges to make indexation increases to annual licence charges that reflect increases in regulatory costs.

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% which is the effective annual salary increase under the ARPANSA Enterprise Agreement 2017 – 2020 which took effect from 31 August 2017.

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: 25931).

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 2020.

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 2020*

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 2020*.

Section 2 – Commencement

This section provides for the regulations to commence on 1 July 2020.

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

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	Existing Charge (\$)	New annual 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	26,902	27,440
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	67,263	68,608
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	26,902	27,440
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	134,530	137,220
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	67,263	68,608

Table Item	Thing authorised to be done by licence	Existing Charge (\$)	New annual charge (\$)
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	53,811	54,887
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	134,530	137,220
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	134,530	137,220
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	1,035,880	1,056,597
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	269,060	274,441
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	13,451	13,720

Table Item	Thing authorised to be done by licence	Existing Charge (\$)	New annual charge (\$)
12.	Constructing a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	26,902	27,440
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	13,451	13,720
14.	Operating a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	67,263	68,608
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	26,902	27,440
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	13,451	13,720
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	26,902	27,440

Table Item	Thing authorised to be done by licence	Existing Charge (\$)	New annual charge (\$)
18.	<p>Possessing or controlling:</p> <p>(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</p> <p>(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</p>	13,451	13,720
19.	<p>Operating:</p> <p>(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</p> <p>(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</p>	67,263	68,608
20.	<p>Decommissioning, disposing of or abandoning:</p> <p>(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</p> <p>(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</p>	26,902	27,440
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	26,902	27,440

Table Item	Thing authorised to be done by licence	Existing Charge (\$)	New annual 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	67,263	68,608
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	26,902	27,440
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	107,622	109,774
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	67,263	68,608

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 amount of the annual licence charges listed in the section 8(2) table by 2% as follows:

Table Item	Kind of prescribed radiation facility	Existing Charge (\$)	New annual charge (\$)
1.	Particle accelerator that: (a) has, or is capable of having, a beam energy greater than 1 MeV; or	14,350	14,637

Table Item	Kind of prescribed radiation facility	Existing Charge (\$)	New annual charge (\$)
2.	Irradiator containing more than 10^{15} Bq of a controlled material	14,350	14,637
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	14,350	14,637
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	28,704	29,278

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 amount of the annual licence charges listed in the section 8(3) table by 2% as follows:

Table Item	Kind of prescribed radiation facility	Existing Charge (\$)	New annual charge (\$)
1.	Decommissioning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site	47,840	48,796
2.	Disposing of or abandoning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site	31,892	32,529

Table Item	Kind of prescribed radiation facility	Existing Charge (\$)	New annual charge (\$)
3.	Decommissioning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores	47,840	48,796
4.	Disposing of or abandoning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores	31,892	32,529

Items [34] to [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	Existing Charge (\$)	New annual charge (\$)
1.	Possessing or controlling a prescribed legacy site	14,864	15,161
2.	Remediating a prescribed legacy site	224,558	229,049
3.	Abandoning a prescribed legacy site	29,939	30,537

Items [37] to [39] Amendments – 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 increases the amount of the annual licence charges listed in the section 10 table by 2% as follows:

Table Item	Charges for certain licence holders	Existing Charge (\$)	New annual charge (\$)
1.	Australian National University	43,050	43,911
2.	Australian Nuclear Science and Technology Organisation	3,033,464	3,094,133

3.	Department of Defence	194,107	197,989
----	-----------------------	---------	---------

Item [40] Amendments to section 12 – Annual charge for source licences

This amendment increases the amount of the annual licence charges for each source by 2%, from \$663 to \$676. The annual charge for source licences is calculated by multiplying \$676 by the total number of controlled apparatus or controlled materials held by the licence holder.

Items [41] to [47] Amendments - Amendments to 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 seven particular licence holders. This amendment increases the amount of the annual licence charges listed in the section 13 table by 2% as follows:

Table Item	Charges for certain licence holders	Existing Charge (\$)	New annual charge (\$)
1.	Australian Federal Police	81,121	82,743
2.	Australian National University	142,947	145,805
3.	Australian Nuclear Science and Technology Organisation	213,512	217,782
4.	Australian War Memorial	25,567	26,078
5.	Commonwealth Scientific and Industrial Research Organisation	510,163	520,366
6.	Department of Defence	268,228	273,592
7.	National Measurement Institute	26,040	26,560

Statement of Compliance 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 2020**

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.

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 legislative 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.

The Hon. Richard Colbeck, Minister for Aged Care and Senior Australians