EXPLANATORY STATEMENT

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

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021* (the Regulations) increases annual charges for licences under the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998* (the Licence Charges Act).

The *Australian Radiation Protection and Nuclear Act 1998* (the ARPANS Act) established the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Agency (ARPANSA) as a Statutory Office to provide regulatory services for Commonwealth entities that deal with radiation equipment and material or undertake certain activities in relation to radiation facilities and nuclear installations. The CEO of ARPANSA issues licences to Commonwealth entities to ensure that such operations can be undertaken safely, minimising the risk of harm to people or to the environment from the operations.

Recovery of regulatory costs is achieved through the dual mechanisms of application fees applied to applicants seeking licences under the ARPANS Act and annual charges levied against existing licence holders under the authority of the Licence Charges Act. The annual increase of 2 per cent in application fees applied to applicants seeking a licence is implemented in the *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 2) Regulations 2021*, which would commence concurrently with the Regulations.

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 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* (the Licence Charges Regulations) prescribe the annual licence charges to give effect to the Licence Charges Act.

Under sections 4 and 5 of the Licences Charges Act, holders of licences issued by the CEO of ARPANSA must pay an annual licence charge, which the Licence Charges Regulations prescribe.

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.

The Regulations ensures the CEO of ARPANSA is able to recover the actual cost of regulating licence holders under the Licence Charges Act by implementing the 2021 annual review of licence charges.

Charges were indexed annually from 2010 to 2018 based on the annual Wage Price Index (WPI) as reported by the Australian Bureau of Statistics for the twelve months ending at the September quarter each year, but this was not considered to be the most accurate reflection of the actual annual increase in the costs of providing regulatory services by a Commonwealth agency across the year.

Since 2019 indexation of licence charges has been based on prescribed salary increases for ARPANSA staff in the ARPANSA 2017-2020 Enterprise Agreement, which has now been supplemented by a determination made under subsection 24(1) of the *Public Service Act 1999* to provide ARPANSA staff with an increase to salary of 2 per cent each year from 2020 to 2022.

The Regulations gives effect to a 2021 indexation of 2 per cent, to ensure ARPANSA's full cost recovery of regulatory services.

No consultation was undertaken among licence holders (all of whom are Commonwealth entities, with the exception of the publicly listed Silex Systems Limited) as the proposed 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 for the Regulations (OBPR ID: 43795).

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

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

The Regulations commence on 1 July 2021.

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 Regulations 2021*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence on 1 July 2021.

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 - Schedule(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

Item [1] - section 7

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	Act authorised by licence	Existing annual 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	27,440	27,988
2.	Constructing a nuclear reactor designed:	68,608	69,980

	(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		
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	27,440	27,988
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	137,220	139,964
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	68,608	69,980
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	54,887	55,984
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	137,220	139,964
8.	Possessing or controlling a nuclear reactor:	137,220	139,964

	(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		
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	1,056,597	1,077,728
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	274,441	279,929
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	13,720	13,994
12.	Constructing a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	27,440	27,988
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	13,720	13,994
14.	Operating a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9	68,608	69,980
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	27,440	27,988
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	13,720	13,994

	(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		
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	27,440	27,988
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	13,720	13,994
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	68,608	69,980
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	27,440	27,988

	activity that was greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations		
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	27,440	27,988
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	68,608	69,980
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	27,440	27,988
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	109,774	111,969
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	68,608	69,980

Item [2] - subsection 8(2)

Subsection 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 subsection 8(2) table by 2% as follows:

Table Item	Kind of prescribed radiation facility	Existing annual charge ($)	New annual charge ($)
1.	Particle accelerator that: (a)) has, or is capable of having, a beam energy greater than 1 MeV; or (b) can produce neutrons	14,637	14,929
2.	Irradiator containing more than 10^{15} Bq of a controlled material	14,637	14,929
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	14,637	14,929
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	29,278	29,863

Item [3] - subsection 8(3)

Subsection 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 subsection 8(3) table by 2% as follows:

Table Item	Act authorised by licence	Existing annual charge ($)	New annual charge ($)
1.	Decommissioning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site	48,796	49,771

2.	Disposing of or abandoning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site	32,529	33,179
3.	Decommissioning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores	48,796	49,771
4.	Disposing of or abandoning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores	32,529	33,179

Item [4] - section 9

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	Act authorised by licence	Existing annual charge ($)	New annual charge ($)
1.	Possessing or controlling a prescribed legacy site	15,161	15,464
2.	Remediating a prescribed legacy site	229,049	233,629
3.	Abandoning a prescribed legacy site	30,537	31,147

Item [5] - subsection 10(1)

Subsection 10(1) 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 subsection 10(1) table by 2% as follows:

Table Item	Name	Existing annual charge ($)	New annual charge ($)
1.	Australian National University	43,911	44,789
2.	Australian Nuclear Science and Technology Organisation	3,094,133	3,156,015

3.	Department of Defence	197,989	201,948

Item [6] - section 12

This amendment increases the amount of the annual licence charge for each controlled apparatus or controlled material held by the licence holder by 2%, from $676 to $689.

Item [7] - subsection 13(1)

Subsection 13(1) 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 subsection 13(1) table by 2% as follows:

Table Item	Name	Existing annual charge ($)	New annual charge ($)
1.	Australian Federal Police	82,743	84,397
2.	Australian National University	145,805	148,721
3.	Australian Nuclear Science and Technology Organisation	217,782	222,137
4.	Australian War Memorial	26,078	26,599
5.	Commonwealth Scientific and Industrial Research Organisation	520,366	530,773
6.	Department of Defence	273,592	279,063
7.	National Measurement Institute	26,560	27,091

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 (Licence Charges) Amendment Regulations 2021

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 Regulations 2018 to give effect to a 2021 indexation of 2 per cent to annual licence charges, to ensure ARPANSA's full cost recovery of regulatory services.

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 give effect to a 2021 indexation of 2 per cent to annual licence charges payable by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for existing licence holders under the authority of the Licence Charges Act.

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 Senior Australians and Aged Care Services