

## EXPLANATORY STATEMENT

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

*Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (No. 2) Regulations 2021*

The *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act) established the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Safety 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 *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998* (the Licence Charges Act). The proposed annual increase of 2 per cent in application fees applied to applicants seeking a licence would be implemented in a separate amendment to the *Australian Radiation Protection and Nuclear Safety Regulations 2018*, which would commence concurrently with the proposed *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (No. 2) Regulations 2021* (the proposed 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 Licence Charges Act, holders of licences issued by the CEO of ARPANSA must pay an annual licence charge, which the Licence Charges Regulations prescribe.

The purpose of the Regulations is to amend the Licence Charges Regulations to decrease certain annual licence charges and increase other annual licence charges so that the total annual licence charges received recover the actual regulatory costs incurred on a basis that is fair to all licence holders.

The Regulations ensures the CEO of ARPANSA is able to recover the actual cost of regulating holders of licences issued under the ARPANS Act, as part of ARPANSA's commitment to full cost-recovery of ARPANSA's regulatory services.

All licence holders (38 in total) are Commonwealth entities, with the exception of the publicly listed Silex Systems Limited. The two largest licence holders, the Department of Defence and the Australian Nuclear Science and Technology Organisation (ANSTO), now consume a larger portion of the total regulatory effort and to recover the increase in regulatory costs associated with these licence holders their charges have been increased by 18.1 per cent and 15.6 per cent, respectively. The remaining smaller 36 licence holders (including Silex Systems Limited) now consume a smaller portion of the total regulatory effort and their charges have been decreased accordingly, by between 4.9 and 39.0 per cent.

The Regulations give effect to a decrease in charges for certain licences and an increase in charges for other licences, from 1 July 2022, to ensure ARPANSA's full cost recovery of regulatory services.

Regarding consultation, all licence holders have been consulted. The Department of Defence and the ANSTO have both specifically been consulted on the proposed increases and have accepted the changes. The Office of Best Practice Regulation (OBPR) has exempted ARPANSA from the need to prepare a Regulatory Impact Statement for the Regulations (OBPR ID: 44721).

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 Regulations may be exercised.

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

The Regulations commence on 1 July 2022.

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

**Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (No.2) 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 (No.2) Regulations 2021*.

**Section 2 - Commencement**

This section provides for the Regulations to commence on 1 July 2022.

**Section 3 - Authority**

This section provides that the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (No. 2) Regulations 2021* is 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**

**Items [1] and [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. These amendments amend the amounts of the annual licence charges listed in the subsection 8(2) table 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	14,929	12,955
2.	Irradiator containing more than 10 <sup>15</sup> Bq of a controlled material	14,929	12,955

Table Item	Kind of prescribed radiation facility	Existing annual charge (\$)	New annual 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	14,929	12,955
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 $10^9$	29,863	38,865

### Items [3], [4] and [5] – subsection 10(1)

Subsection 10(1) has a table that sets out the annual facility licence charges for three particular licence holders. These amendments amend the amounts of the annual licence charges listed in the subsection 10(1) table as follows:

Table Item	Name	Existing annual charge (\$)	New annual charge (\$)
1.	Australian National University	44,789	22,857
2.	Australian Nuclear Science and Technology Organisation	3,156,015	3,680,859
3.	Department of Defence	201,948	160,190

### Item [6] - section 12

This amendment decreases the amount of the annual licence charge for each controlled apparatus or controlled material held by the licence holder from \$689 to \$595.

**Items [7], [8], [9], [10], [11], [12] and [13] - subsection 13(1)**

Subsection 13(1) has a table that sets out the annual source licence charges for seven particular licence holders. These amendments amend the amounts of the annual licence charges listed in subsection 13(1) table as follows:

Table Item	Name	Existing annual charge (\$)	New annual charge (\$)
1.	Australian Federal Police	84,397	73,526
2.	Australian National University	148,721	125,828
3.	Australian Nuclear Science and Technology Organisation	222,137	223,428
4.	Australian War Memorial	26,599	16,223
5.	Commonwealth Scientific and Industrial Research Organisation	530,773	415,283
6.	Department of Defence	279,063	408,122
7.	National Measurement Institute	27,091	23,187

## **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 (No. 2) 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 (Licence Charges) Regulations 2018 to give effect to a decrease in charges for certain licences and an increase in charges for other licences, from 1 July 2022, to ensure full cost recovery of regulatory services provided to those licence holders.

#### **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 have effect to decrease charges for certain licences and increase charges for other licences, from 1 July 2022, payable by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for holders of licences issued under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

#### **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. Dr David Gillespie MP, Minister for Regional Health**