

EXPLANATORY STATEMENT

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

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2024 Measures No. 1) Regulations 2024

Purpose and operation

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2024 Measures No. 1) Regulations 2024* amends the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018* to decrease certain annual licence charges and increase other annual licence charges. This ensures the total annual licence charges recover the actual costs of regulatory activity on a basis that is fair to all licence holders and reflects ARPANSA's commitment to full cost-recovery of ARPANSA's regulatory services.

Background

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.

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 to allow for the recovery of the cost of providing regulatory services to existing licence holders.

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. The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018* prescribe the annual licence charge.

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* prescribe the annual licence charges levied on holders of licences under the Act.

The purpose of *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2024 Measures No. 1) Regulations 2024* is to amend the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018* 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.

Authority

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

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

This instrument commences on 1 July 2024.

Consultation

ARPANSA wrote to all licence holders about the proposed amendments inviting feedback on the amendments in early January 2024. All licence holders are Commonwealth entities, with the exception of the publicly listed Silex Systems Limited. Licence holders were overall supportive of the proposed amendments with no negative feedback received by ARPANSA.

A preliminary assessment of the proposal to make the amendments contained in the instrument was conducted by the Office of Impact Analysis (OIA), based on information provided by ARPANSA for the purposes of determining whether an Impact Analysis (IA) would be required. OIA considered that the proposals were unlikely to have more than a minor regulatory impact on the businesses involved and advised that the preparation of an IA was not required (OIA reference numbers OIA24-06733).

General

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2024 Measures No. 1) Regulations 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2024 Measures No. 1) Regulations 2024*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 July 2024.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*.

Section 4 - Schedule(s)

Section 4 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] - subsection 8(2)

Subsection 8(2) of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018* (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 amounts of the annual licence charges listed in subsection 8(2) for certain kinds of prescribed radiation facilities 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	13,343	15,654
2.	Irradiator containing more than 10 ¹⁵ Bq of a controlled material	13,343	15,654

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	13,343	15,654
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	40,030	46,962

This amendment ensures the recovery of the actual costs of regulating prescribed radiation facilities not formerly used for weapons tests or radioactive ores of the kind set out in the Subsection 8(2) Table of the Licence Charges Regulations.

Item [2] – subsection 10(1)

This amendment increases the amounts of the annual licence charges listed in the subsection 10(1) table for certain facility licence holders as follows:

Table Item	Name	Existing annual charge (\$)	New annual charge (\$)
1.	Australian National University	23,542	26,662
2.	Australian Nuclear Science and Technology Organisation	3,791,284	5,018,961
3.	Department of Defence	164,995	281,796

This amendment ensures the recovery of the actual costs of regulating certain facility licence holders set out in the subsection 10(1) Table of the Licence Charges Regulations.

Item [3] - section 12

This amendment increases the amount of the annual licence charge for each controlled apparatus or controlled material held by a licence holder from \$612 to \$718.

This amendment ensures the recovery of the actual costs of regulating controlled apparatus and controlled material held by licence holders.

Item [4] - subsection 13(1)

These items decrease the amounts of licence charges listed in the subsection 13(1) table for certain source licence holders and increase the amounts of the annual licence charges listed in the subsection 13(1) table for certain other source licence holders as follows:

Table Item	Name	Existing annual charge (\$)	New annual charge (\$)
1.	Australian Federal Police	75,731	38,275
2.	Australian National University	129,602	68,540
3.	Australian Nuclear Science and Technology Organisation	230,130	327,502
4.	Australian War Memorial	16,709	11,744
5.	Commonwealth Scientific and Industrial Research Organisation	427,741	454,902
6.	Department of Defence	420,365	139,941
7.	National Measurement Institute	23,882	9,170

This amendment ensures the recovery of the actual costs of regulating certain source licence holders set out in the subsection 13(1) Table of the Licence Charges Regulations.

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 (2024 Measures No. 1) Regulations 2024

This Disallowable 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 Disallowable Legislative Instrument

The legislative instrument amends the Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018 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.

Human rights implications

ARPANSA has assessed whether this Disallowable Legislative Instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of this Disallowable Legislative Instrument and the nature of the applicable rights and freedoms, ARPANSA has formed the view that the Determination does not engage any of those rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Ged Kearney
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Parliamentary Secretary to the Minister for Health and Aged Care