

EXPLANATORY STATEMENT

Australian Radiation Protection and Nuclear Safety Act 1998

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

Purpose and operation

The *Australian Radiation Protection and Nuclear Safety Amendment (2024 Measures No. 1) Regulations 2024* amends the *Australian Radiation Protection and Nuclear Safety Regulations 2018* to give effect to an annual four per cent increase in fees for applications for licences under the *Australian Radiation Protection and Nuclear Safety Act 1998*. 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) has been established to protect the health and safety of people, and the environment, from the harmful effects of radiation. 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.

Subsection 85(1) of the ARPANS 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 Act.

The *Australian Radiation Protection and Nuclear Safety Regulations 2018* (the Principal Regulations) prescribe the fees for licence applications.

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

- give effect to an annual four per cent increase in fees for applications for licences under the ARPANS Act, from 1 July 2024; and
- make other amendments of a minor machinery nature to make the Principal Regulations easier to understand for licence holders.

The Amendment Regulations ensure the CEO of ARPANSA is able to recover the actual cost of processing applications for licences issued under the ARPANS Act, as part of ARPANSA's commitment to full cost recovery of ARPANSA's regulatory services.

Recovery of the costs of processing applications for licences is achieved through fees prescribed under the authority of the ARPANS Act. The annual indexation amount of four per cent is based on the increase in the actual costs of wages for the financial year 2024-2025. The Amendment Regulations increase application fees by four percent to cover the actual cost for the processing of applications for licence.

Authority

Subsection 85(1) of the ARPANS 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 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

No consultation with licence holders was considered necessary as the amendments are machinery in nature and licence holders are aware of annual changes in fees to reflect the actual cost of processing licensing applications. With the exception of the publicly listed Silex Systems Limited, all existing licence holders are Commonwealth entities.

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 OIA24-07159).

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 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 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 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

Items [1], [2], [3], [4] and [5] - Section 49

These items increase the amount of the application fees listed in the section 49 table by four per cent as follows:

Table Item	Application	Existing Fee (\$)	New Fee (\$)
1.	Application for a facility licence, except an application covered by item 2	10,607	11,031
2.	Application for a facility licence, if the application relates to a controlled facility that is a particle accelerator described in paragraph 13(1)(a) of this instrument	11,787	12,258
3.	Application for a source licence, if the application relates only to controlled apparatus or controlled material in Group 1	834	867

Table Item	Application	Existing Fee (\$)	New Fee (\$)
4.	Application for a source licence, if the application relates only to controlled apparatus or controlled material in: (a) Group 2; or (b) both Groups 1 and 2	2,463	2,561
5.	Application for a source licence, if the application relates to controlled apparatus or controlled material in: (a) Group 3; or (b) Group 3, and either or both Groups 1 and 2	9,215	9,583

This amendment ensures the recovery of the actual costs of processing certain applications set out in section 49 of the *Australian Radiation Protection and Nuclear Safety Regulations 2018*.

Item [6] – Paragraph 50(2)(a)

This item repeals the existing paragraph and substitute a four percent increase to the amount for each hour, or part of an hour, spent in assessing a licence application from \$176 to \$183. This item also increases the amount credited to the applicant in determining the assessment fee from \$10,607 to \$11,031. The amount credited to the applicant in paragraph 50(2)(a) ensures that an applicant does not pay more than the value of the service provided in assessing an application by taking into account the nominal application fee covered by section 49 of the Regulations already paid by the applicant.

This amendment ensures the recovery of the actual costs of processing certain applications set out in section 50 of the *Australian Radiation Protection and Nuclear Safety Regulations 2018*.

Item [7] - Paragraph 84(a)

This item repeals paragraph 84(a), and substitute:

- (a) the *Protection from Harmful Radiation Act 1990* (NSW);

This amendment ensures that activities of controlled or permitted persons covered by the operation of the *Australian Radiation Protection and Nuclear Safety Act 1998* are not inadvertently covered by the *Protection from Harmful Radiation Act 1990* (NSW), which was the new name given to the *Radiation Control Act 1990* (NSW) on 24 October 2023. This amendment makes the *Australian Radiation Protection and Nuclear Safety Regulations 2018* easier for licence holders to understand by properly referring to the correct name of the *Protection from Harmful Radiation Act 1990* (NSW) in paragraph 84(a).

The *Protection from Harmful Radiation Act 1990* (NSW), mentioned above, may be obtained, free of charge, from the NSW legislation website (www.legislation.nsw.gov.au).

Item [8] – In the appropriate position in Part 8

This amendment amends Part 8 of the Regulations to add a new heading for *Division 6 - Australian Radiation Protection and Nuclear Safety Amendment (2024 Measures No. 1) Regulations 2024*.

The amendment adds a new section 100 (heading) for *Fees*.

This amendment adds a new subsection 100(1) to the Regulations and makes those amendments of section 49 made by the amending instrument, as referred to in items 1 to 5 above, apply in relation to applications made after the commencement date.

This amendment adds a new subsection 100(2) to the Regulations and makes those amendments of section 50 made by the amending instrument, as referred to in item 6 above, apply in relation to applications made after the commencement date.

This amendment adds a new subsection 100(3) to the Regulations and provides that despite the amendments of section 50 by the amending instrument, as referred to in item 6 above, the existing section 50 continues to apply, in relation to applications made before the commencement time, as if those amendments had not been made; and the fee for each hour, or part of an hour, spent after the commencement time in assessing the application were \$183.

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 (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 Regulations 2018 to give effect to an annual four per cent increase in fees for applications for licences under the *Australian Radiation Protection and Nuclear Safety Act 1998*, from 1 July 2024, and make other minor machinery amendments.

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
Assistant Minister for Health and Aged Care
Parliamentary Secretary to the Minister for Health and Aged Care**