

EXPLANATORY STATEMENT

Subject: *Australian Radiation Protection and Nuclear Safety Act 1998*

Australian Radiation Protection and Nuclear Safety Amendment (2016 Measures No. 1) Regulation 2016

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation.

Subsection 85(1) of *Australian Radiation Protection and Nuclear Safety Act 1998* (the 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 Regulation amends the Australian Radiation Protection and Nuclear Safety Regulations 1999 to increase the licence application fees by 2.7 per cent and to make other minor and consequential amendments resulting from recent changes to the *Australian Radiation Protection and Nuclear Safety Act 1998*.

The *Australian Radiation Protection and Nuclear Safety Amendment Act 2015* improves the operation of the legislation and updates the regulatory scheme to better reflect international best practice. The amendments to the Act came into effect on 8 October 2015. The Regulation amends the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the ARPANS Regulations) to align with changes recently made to the Act. The consequential amendments include:

- updating the language used in technical definitions to better reflect internationally accepted terms and concepts; and
- minor, technical amendments to improve clarity, remove redundant provisions and enhance administration of the regulatory instrument.

Under section 34 of the Act, an application for a facility or source licence must be in a form approved by the CEO and accompanied by such application fee as is prescribed in the ARPANS Regulations. The fees are listed in Schedule 3A (Facility licence application fees for nuclear installations), Schedule 3B (Facility licence application fees for prescribed radiation facilities), and Schedule 3C (Source licence application fees) to the ARPANS Regulations.

The Regulation amends the ARPANS Regulations to increase the licence application fees collected by the CEO by 2.7 per cent on 1 July 2016.

The increase is to adjust ARPANSA's licence application fees to recover increased labour costs. It is in line with the Australian Bureau of Statistics' Wage Price Index (excluding bonuses) for the public sector as at 30 September 2015. The licence application fees were last adjusted on 1 July 2015.

The proposed regulation would also make other minor amendments to update references, correct certain errors and omissions and improve the drafting of the provisions.

The Regulation is being brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2016 Measures No. 1) Regulation 2016*.

Details of the Regulation are set out in the Attachment.

The Act does not specify any condition that needs to be met before the power to make the Regulation may be exercised.

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

The proposed Regulation commences on 1 July 2016.

The Minute recommends that the Regulation be made in the form proposed.

Consultation

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: 19931) as the amendments are either minor or machinery in nature and the impact on businesses and not for profit sector is low to nil. No consultation was undertaken as, under section 18 of the *Legislative Instruments Act 2003*, consultation is unnecessary where amendments are minor or machinery in nature.

Authority: Subsection 85(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998*

Details of the proposed *Australian Radiation Protection and Nuclear Safety Amendment (2016 Measures No. 1) Regulation 2016*

Section 1 – Name of regulation

This section provides that the name of the regulation is the *Australian Radiation Protection and Nuclear Safety Amendment (2016 Measures No. 1) Regulation 2016*.

Section 2 – Commencement

This section provides for the regulation to commence on 1 July 2016.

Section 3 – Authority

This section provides that the regulation is made under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Section 4 – Schedules(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

Part 1—Amendment of fees

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item [1] Amendments of listed provisions—Schedule 3A

Schedule 3A lists the fees that must accompany an application for a facility licence for particular activities in relation to certain nuclear installations. These amendments increase the application fees in the table in Schedule 3A by 2.7 per cent as follows:

Table Item	Thing authorised to be done by licence	Fees (\$)
1.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	28 021 to 28 777
2.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	175 135 to 179 863

Table Item	Thing authorised to be done by licence	Fees (\$)
3.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of less than 1 megawatt	140 109 to 143 891
4.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of less than 1 megawatt	70 053 to 71 944
5.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of less than 1 megawatt	70 053 to 71 944
6.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	140 109 to 143 891
7.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	560 434 to 575 565
8.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of 1 megawatt or more	140 109 to 143 891
9.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of 1 megawatt or more	600 467 to 616 679
10.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of 1 megawatt or more	140 109 to 143 891
11.	Preparing a site for a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	14 010 to 14 388
12.	Constructing a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	63 047 to 64 749
13.	Possessing or controlling a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	14 010 to 14 388

Table Item	Thing authorised to be done by licence	Fees (\$)
14.	Operating a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	63 047 to 64 749
15.	De-commissioning, disposing of or abandoning a controlled facility, being a plant that was used for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	28 021 to 28 777
16.	Preparing a site for a controlled facility, being: (a) a nuclear waste storage facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	333 593 to 342 600
17.	Constructing a controlled facility, being: (a) a nuclear waste storage facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	400 311 to 411 19
18.	Possessing or controlling a controlled facility, being: (a) a nuclear waste storage facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	14 010 to 14 388
19.	Operating a controlled facility, being: (a) a nuclear waste storage facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	210 163 to 215 837
20.	De-commissioning, disposing of or abandoning a controlled facility, being: (a) a nuclear waste storage facility that formerly contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that formerly contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 8	28 021 to 28 777
21.	Preparing a site for a controlled facility, being a facility to produce radioisotopes, that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	70 053 to 71 944
22.	Constructing a controlled facility, being a facility to produce radioisotopes, that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	140 109 to 143 891

Table Item	Thing authorised to be done by licence	Fees (\$)
23.	Possessing or controlling a controlled facility, being a facility producing radioisotopes and containing controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	14 010 to 14 388
24.	Operating a controlled facility, being a facility producing radioisotopes and containing controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	126 098 to 129 502
25.	De-commissioning, disposing of, or abandoning a controlled facility, being a facility that formerly produced radioisotopes and contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 11	28 021 to 28 777

Item [2] Amendments of listed provisions—Part 1 of Schedule 3B

Part 1 of Schedule 3B lists the fees that must accompany an application for a facility licence for particular kinds of prescribed radiation facilities. The amendments increase the application fees in the table in Part 1 of Schedule 3B by 2.7 per cent as follows:

Table Item	Kind of prescribed radiation facility	Fees (\$)
1.	Particle accelerator with a beam energy of more than 1 mega electron volt (MeV)	12 609 to 12 949
2.	Particle accelerator capable of producing neutrons	12 609 to 12 949
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	12 609 to 12 949
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	12 609 to 12 949
5.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, but the shielding does not prevent a person from being exposed to the source	12 609 to 12 949
6.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, and with a source that is not inside the shielding during the operation of the irradiator	12 609 to 12 949
7.	Facility for the production, processing, use, storage, management or disposal of: (a) unsealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^6 ; or (b) sealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^9	25 220 to 25 900

Item [3] Amendments of listed provisions—Part 2 of Schedule 3B

Part 2 of Schedule 3B lists the fees that must accompany an application for a facility licence for particular activities in relation to certain prescribed radiation facilities. The amendments increase the application fees in the table in Part 2 of Schedule 3B by 2.7 per cent as follows:

Table Item	Thing authorised to be done by licence	Fee (\$)
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	42 032 to 43 166
2.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	28 021 to 28 777
3.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	42 032 to 43 166
4.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	28 021 to 28 777

Item [4] Amendments of listed provisions—Part 2 of Schedule 3C

Part 2 of Schedule 3C lists the application fees that must accompany an application for a source licence to deal with particular kinds of controlled apparatus or controlled material. For purposes of source licence application fees, controlled material and controlled apparatus have been divided into three groups, namely Group 1, Group 2 and Group 3, in ascending order of risk to people and the environment. The proposed amendments would increase the application fees in the table in Part 2 of Schedule 3C by 2.7 per cent as follows:

Table Item	Number of controlled apparatus or controlled materials in the same location to be dealt with under the application	Fees (\$)
1.	For less than 4 controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	700 to 718 2 801 to 2 876 8 405 to 8 631
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	1 819 to 1 868 5 604 to 5 755 16 811 to 17 264
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	3 503 to 3597 10 533 to 10 817 30 822 to 31 654

Part 2—Other amendments

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item [5] Regulation 5

Regulation 5 reiterates the definition of a ‘controlled facility’ as defined in section 13 of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act). The current regulation 5 is administratively burdensome as it requires consequential updates to the Regulations whenever the definitions are amended in the principal Act. The amendment repeals this regulation and amends the introductory words to regulation 6 to resolve this administrative burden.

Item [6] Subregulation 6(1)

Section 13 of the Act defines a ‘controlled facility’ as a nuclear installation or a ‘prescribed radiation facility’. Regulation 6 prescribes those prescribed radiation facilities. The amendment makes an editorial change to the way section 13 of the Act is referred to.

Item [7] At the end of Subregulation 6(1)

The amendment includes a note that refers to section 13 of the Act for the definition of ‘controlled facility’.

Item [8] After regulation 6

The amendment is consequential to recent amendments to the Act. The Little Forest Legacy Site is a legacy site with radioactive and chemical wastes buried in the site. The Site was licensed as a ‘waste store’ before the Act was amended in 2015 as the Act did not provide for the licensing of a ‘legacy site’. The Act now provides for the licensing of a prescribed legacy site. The proposed amendment would insert a new regulation 6AA that prescribes the Little Forest Legacy Site.

Item [9] Subregulations 30(2), 31(1), (2) and 35(2) and Item 10 Subregulation 35(3)

Subsections 23(2) and 26(2) of the Act have been amended to remove references to the Radiation Health and Safety Advisory Council (the Council). The effects of these amendments to the Act are that the Radiation Health Committee and the Nuclear Safety Committee would now perform their functions only on the request of the CEO of ARPANSA. The amendments to the Act were necessary to ensure that the CEO has the capacity to manage the budget of ARPANSA and to prioritise requests for advice and development and review of policies, codes and standards. The amendments to subregulations 30(2), 31(1), (2), 35(2) and 35(3) are consequential to the recent amendments to the Act and remove references to the Council or the Chair of the Council in these sub regulations.

Item [11] Subregulations 37(1) and (4)

Subsection 30(1) of the Act prohibits certain conduct in relation to a controlled facility unless the conduct is licensed or exempted from the need to be licensed. The subsection was recently amended to add a new paragraph “(ea)” to prohibit the remediation of a prescribed legacy site unless the conduct is licensed or exempted from the need to be licensed. Regulation 37 provides the circumstances in which the CEO may exempt a controlled facility from the need to be licensed. The amendment to subregulations 37(1) and (4) is consequential to the amendment to subsection 30(1) of the Act and would amend the sub regulations by adding references to paragraph “(ea)”.

Item [12] After regulation 40C

The amendment is consequential to the recent amendments to the Act and would insert a new regulation 40CA that describes the applicable fee that must accompany an application for a facility licence for a prescribed legacy site.

Item [13] Paragraph 48(3)(b)

Paragraph 48(3)(b) is a general licence condition that requires licence holders to comply with the *Code of Practice for the Near-Surface Disposal of Radioactive Waste in Australia (1992)*. This code is out of date and has been superseded by more recent International Atomic Energy Agency documents, which will shortly be incorporated by reference into ARPANSA's website with compliance requirements managed through conditions in the relevant licences. The amendment deletes paragraph 48(3)(b).

Item [14] Regulation 65

Under section 84 of the Act, the CEO of ARPANSA must exercise his powers in accordance with international agreements. Subsection 84(3) of the Act was recently amended. The amendment deleted paragraph 84(3)(b) of the Act. The amendment to regulation 65 is consequential to the amendment to subsection 84(3).

Item [15] Paragraph 66(2)(b)

The amendment requires an application for a review of decisions by the CEO to be given to the Minister within 28 days instead of 90 days. The proposed amendment is consistent with recent amendments to the Act that made similar amendments to provisions providing for a review of the CEO's decision.

Item [16] After Part 7

The amendment inserts a new Part 8 – Application and transitional provisions

Item [17] Clause 1 of Schedule 1 (table items 1 and 2)

Clause 1 of Schedule 1 sets out exposure limits for non-ionizing radiation apparatus. The amendment deletes items 1 and 2 of the table in clause 1 of Schedule 1 which are outdated and would replace them with a new item 1 that was published more recently.

Item [18] Clause 1 of Schedule 2 (table item 8)

Clause 1 of Schedule 2 is a table that sets out dealings that are exempt dealings. Table item 8 of this clause exempt dealings that involve a controlled apparatus or controlled material that is part of, used in connection with, produced by, incorporated in, stored in, or disposed of in, a controlled facility for which a facility licence is in force. The amendment deletes table item 8 as recent changes to the Act now provide for the authorisation of sources in facility licences.

Item [19] Clause 2 of Schedule 2 (table item 6)

Clause 2 of Schedule 2 is a table that sets out activity concentration values and activity values for nuclides. Table Item 6 in the table should be for the radionuclide, "N-13". The amendment corrects an error introduced during the 2015 amendment of the Regulations.

Item [20] After Schedule 3B

Schedule 3B sets out the amount of the application fee for a facility licence for prescribed radiation facilities. The amendment is consequential to recent amendments to the Act and

inserts a new Schedule 3BA with a table that sets out the amount of the application fees for a facility licence in relation to a prescribed legacy site as follows.

Facility licence application fees—prescribed legacy sites		
Item	Thing authorised to be done by licence	Amount (\$)
1	Possessing or controlling a controlled facility that is a prescribed legacy site	14 010
2	Remediating a controlled facility that is a prescribed legacy site	210 163
3	Abandoning a controlled facility that is a prescribed legacy site	28 021

Item [21] Schedule 5

The amendment deletes Schedule 5 – International agreements and replace it with a new Schedule 5 with a table that sets out relevant international agreements as follows.

Item	Title of agreement	Date agreement signed on behalf of Australia
1	Treaty on the Non-Proliferation of Nuclear Weapons	27 February 1970
2	Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons	10 July 1974
3	Convention on the Physical Protection of Nuclear Material	22 February 1984
4	Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency	26 September 1986
5	Convention on Early Notification of a Nuclear Accident	26 September 1986
6	Convention on Nuclear Safety	20 September 1994
7	Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management	13 November 1998
8	Agreement for cooperation between the Government of Australia and the Government of the United States of America concerning technology for the separation of isotopes of uranium by laser excitation, with annexes, exchange of notes and agreed minutes	28 October 1999
9	International Convention for the Suppression of Acts of Nuclear Terrorism	14 September 2005

Item [22] Dictionary

The amendment deletes the entire dictionary as it has been replaced by the “Definitions” in Regulation 3. The last amendment to the Regulations failed to omit the Dictionary.

Item [23] Amendments of listed provisions

The amendments replace the words “nuclear waste” with “radioactive waste” in the listed regulations and subregulations and are consequential to the recent amendments to the Act.

Item [24] Amendments of listed provisions – Schedule 3A

The table in Clause 1 of Schedule 3A sets out the amount of the application fee for a facility licence in relation to a controlled facility that a nuclear installation. The amendments to items 1 to 15 in the table would replace the words “nuclear materials” with “radioactive materials” and the words “nuclear waste” with “radioactive waste” and are consequential to the recent amendments to the Act.

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 (2016 Measures No 1) Regulation 2016

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 Regulation amends the Australian Radiation Protection and Nuclear Safety Regulations 1999 to increase the licence application fees by 2.7 per cent and to make other minor and consequential amendments resulting from recent changes to the *Australian Radiation Protection and Nuclear Safety Act 1998*.

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 increase the licence application fees paid 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.

Other amendments are technical or machinery in nature, namely, amendments to bring the provisions in line with current drafting convention, amendments to improve the clarity of provisions and definitions, updating of technical information.

Conclusion

This Bill 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. Ken Wyatt AM, Assistant Minister for Health and Aged Care
Parliamentary Secretary to the Minister for Health**