

EXPLANATORY STATEMENT

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety Regulations 1999

Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) 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 *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018* (the regulations) amend the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the ARPANS Regulations) to:

- (1) increase the licence application fees prescribed in the ARPANS Regulations by 2.4 per cent, in line with the Australian Bureau of Statistics annualised Wage Price Index (excluding bonuses) for the public sector as at 1 September 2017.
- (2) update the publication details of technical standards and codes incorporated by reference in the ARPANS Regulations, including removing references to superseded publications,
- (3) add a function for the CEO to be ‘competent authority’ for any approval under the ARPANS Transport Code, which requires a competent authority in each jurisdiction and names the CEO as the competent authority for the Commonwealth,
- (4) add a new statutory licence condition, which has in the past been a standard licence condition in every licence issued by the CEO,
- (5) consolidate two items with identical application fees relating to particle accelerators into a single item, and
- (6) exempt certain low hazard radiation apparatus from the requirement to be licensed.

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 licence application fees have been indexed every year since 2010 using ABS wage and labour price indices to recover increased labour costs.

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

The regulations commenced on 1 July 2018 and the increase to the licence application fees took effect on 1 July 2018.

Details of the regulations are set out in the Attachment below.

The regulations were brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulation 2018*.

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

Consultation:

No consultation was therefore undertaken among licence holders (all of whom are Commonwealth entities) as the amendments are machinery in nature and are done annually to ensure the regulations are up-to-date. The Office of Best Practice Regulation (OBPR) exempted ARPANSA from the need to prepare a regulatory impact statement for the amendments (OBPR ID: 22587) as the amendments are machinery in nature and are not likely to result in any change to regulatory costs.

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

Details of the *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018*

Section 1 – Name

This section would provide that the name of the regulations is the *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018*.

Section 2 – Commencement

This section would provide for the regulations to commence on 1 July 2018.

Section 3 – Authority

This section would provide that the regulations are made under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Section 4 – Schedules

This section would provide 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—Amendments of fees

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item 1 Amendments of listed provisions—Schedule 3A

Clause 1 of Schedule 3A has a table that lists the fees that must accompany an application for a facility licence for particular activities in relation to nuclear installations. The amendments would increase the application fees in the table in Schedule 3A by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Amount (\$)
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	29,438 to 30,144
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	183,999 to 188,414

Table Item	Thing authorised to be done by licence	Amount (\$)
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	147,200 to 150,732
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	73,598 to 75,364
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	73,598 to 75,364
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	147,200 to 150,732
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	588,802 to 602,933
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	147,200 to 150,732
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	630,862 to 646,002
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	147,200 to 150,732
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	14,718 to 15,071
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	66,238 to 67,827
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	14,718 to 15,071

Table Item	Thing authorised to be done by licence	Amount (\$)
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	66,238 to 67,827
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	29,438 to 30,144
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	350,479 to 358,890
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	420,574 to 430,667
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	14,718 to 15,071
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	220,801 to 226,100
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	29,438 to 30,144
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	73,598 to 75,364
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	147,200 to 150,732

Table Item	Thing authorised to be done by licence	Amount (\$)
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	14,718 to 15,071
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	132,480 to 135,659
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	29,438 to 30,144

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

Clause 1 of Schedule 3B has a table that lists the fees that must accompany an application for a facility licence for particular kinds of prescribed radiation facilities. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Kind of prescribed radiation facility	Amount (\$)
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	13,246 to 13,563
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	13,246 to 13,563
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	13,246 to 13,563
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	13,246 to 13,563
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	26,495 to 27,130

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

Clause 2 of Schedule 3B has a table that lists the fees that must accompany an application for a facility licence for particular activities in relation to certain prescribed radiation facilities. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Amount (\$)
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	44,158 to 45,217
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	29,438 to 30,144
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	44,158 to 45,217
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	29,438 to 30,144

Item 4 Amendments of listed provisions—Schedule 3BA

Clause 1 of Schedule 3BA has a table that lists the application fees that must accompany an application for a facility licence for particular activities in relation to prescribed legacy sites. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Amount (\$)
1.	Possess or control a controlled facility that is a prescribed legacy site	14,332 to 14,675
2.	Remediate a controlled facility that is a prescribed legacy site	214,996 to 220,155
3.	Abandon a controlled facility that is a prescribed legacy site	28,665 to 29,352

Item 5 Amendments of listed provisions—Part 2 of Schedule 3C

Clause 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 by 2.4 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	734 to 751 2,942 to 3,012 8,829 to 9,040
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	1,910 to 1,955 5,887 to 6,028 17,661 to 18,084
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	3,679 to 3,767 11,065 to 11,330 32,382 to 33,159

Part 2—Other amendments

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item 6 Regulation 3 (definition of *AS/NZS IEC 60825.1:2014*)

The proposed amendment would update the reference to the most recent version of the Standard. This Standard may be obtained from SAI Global (www.saiglobal.com).

Item 7 Regulation 3 (definition of *AS/NZS IEC 60825.2:2011*)

The proposed amendment would update the reference to the most recent version of the Standard. This Standard may be obtained from SAI Global (www.saiglobal.com).

Item 8 Regulation 3 (definition of *AS/NZS IEC 62471:2011*)

The proposed amendment would update the reference to the most recent version of the Standard. This Standard may be obtained from SAI Global (www.saiglobal.com).

Item 9 Regulation 3 (definition of *Disposal Code of Practice*)

The proposed amendment would repeal the definition of the now defunct *Disposal Code of Practice* (including the note) which has been superseded by Amendment 7 to the National Directory for Radiation Protection (NDRP).

Item 10 Regulation 3 (definition of *Mining and Mineral Processing Code and Safety Guide*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au).

Item 11 Regulation 3 (note to the definition of *Mining and Mineral Processing Code and Safety Guide*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 12 Regulation 3 (definition of *Planned Exposure Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 13 Regulation 3 (note to the definition of *Planned Exposure Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 14 Regulation 3 (definition of *Security Code of Practice*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 15 Regulation 3 (note to the definition of *Security Code of Practice*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 16 Regulation 3 (definition of *Transport Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 17 Regulation 3 (note to the definition of *Transport Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 18 At the end of regulation 3B

The proposed amendment would prescribe to the CEO the function of acting as the competent authority for the Commonwealth in the ARPANS Regulations. The Transport Code assigns the regulatory authority in each Australian jurisdiction as the competent authority for these approvals. The CEO of ARPANSA is the competent authority for the Commonwealth but this function has not been formalised in the Act or Regulations. Paragraph 15(1)(i) of the Act provides that the CEO's functions may include "such other functions as are conferred by this Act, the regulations or any other law".

Item 19 Paragraphs 48(2)(a) and (3)(a)

Paragraphs 48(2)(a) and (3)(a) refer to a withdrawn Code of Practice which has been superseded by Amendment 7 to the National Directory of Radiation Protection. The proposed amendment would repeal the references to the withdrawn Code.

Item 20 After regulation 50

The proposed amendment would add a statutory licence condition that requires a licence holder to maintain an accurate inventory of controlled apparatus and material. This is a standard licence condition imposed by the CEO of ARPANSA in all licences that the CEO grants under the Act. The amendment reflects an approach that licence conditions imposed by the CEO in licences should only be licence conditions specific to the particular licence. Standard licence conditions applying to all licences should be in the Regulations.

Item 21 Clause 1 of Schedule 1 (table item 1)

The proposed amendment would update the publication details of the referenced guideline to the author of the guideline.

Item 22 Clause 1 of Schedule 1 (table item 7)

The proposed amendment would substitute a simplified description of the application of the referenced guideline and update the publication details of the guideline to the author of the guideline.

Item 23 Clause 1 of Schedule 1 (note to table)

The proposed amendment would expand the number of items that can be accessed from the ARPANSA website (www.arpansa.gov.au) and add a note identifying guidance material available in relation to the Australian Standard referenced in table item 5.

Item 24 Clause 1 of Schedule 2 (table item 6, column headed “Description of dealing”)

The proposed amendment would update the reference to the most recent version of the Standard. This Standard may be obtained from SAI Global (www.saiglobal.com).

Item 25 Clause 1 of schedule 2 (at the end of the cell at table item 7, column headed “Description of dealing”)

The proposed amendment would provide that:

- radar equipment used for communications;
- radiofrequency equipment used for communications;
- an artificial optical source emitting ultraviolet A radiation (315—400 nm);
- a completely enclosed apparatus containing an ultraviolet radiation light source (e.g. a spectrophotometer);
- a biological safety cabinet (laminar flow or biohazard) with a failsafe interlocking system;
- an embedded (enclosed) laser product with an accessible emission that is lower than the accessible emission limits of a Class 3B laser product, as set out in AS/NZS IEC 60825.1:2014, during normal operations

are exempt dealings for the purposes of the Act.

The list of new exemptions reflects the fact that some forms of non-ionising radiation are intrinsically safe or exposure limits are almost impossible to reach unless there is exposure for thousands of hours.

Item 26 Clause 1 of Schedule 3B (table items 1 and 2)

Clause 1 of Schedule 3B to the ARPANS Regulations has a table that sets out the application fees for particular kinds of prescribed radiation facilities. The proposed amendments would repeal table items 1 and 2 and replace them with a new table item 1 as follows:

Table Item	Kind of prescribed radiation facility	Amount (\$)
1.	Particle accelerator that: (a) has, or is capable of having, a beam energy greater than 1 MeV; or (b) can produce neutrons	13,563

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 (2018 Measures No. 1) Regulations 2018

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 Regulations amend the Australian Radiation Protection and Nuclear Safety Regulations 1999 (the ARPANS Regulations) to increase licence application fees by 2.4 per cent and to make other minor amendments.

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 apparatus or radioactive sources or to engage in activities in relation to radiation facilities and nuclear installations.

Other amendments are minor or machinery in nature, namely, updating the publication details of technical standards and codes incorporated by reference in the ARPANS Regulations, and clarifying certain provisions in the ARPANS Regulations to facilitate interpretation and application.

Conclusion

This 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.

Senator the Hon. Bridget McKenzie, Minister for Rural Health