

EXPLANATORY STATEMENT

Subject - *Australian Radiation Protection and Nuclear Safety Act 1998*
Australian Radiation Protection and Nuclear Safety Amendment
(2021 Measures No. 1) Regulations 2021.

The purpose of the *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 1) Regulations 2021* is to ensure the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is able to recover the cost of assessing licence applications under the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act) by implementing the annual review of fees and make other minor amendments.

The object of the ARPANS Act is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation. To achieve the object of the ARPANS Act the CEO, issues licences to Commonwealth entities that deal with radiation equipment and material or undertake certain activities in relation to radiation facilities and nuclear installations. This ensures that such operations can be undertaken safely and minimises the risk of harm to people or to the environment from them.

Subsection 85(1) of 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 (2021 Measures No. 1) Regulations 2021* (the Regulations) amends the ARPANS Regulations as follows:

- Add and update the publication details of the Codes incorporated by reference in the ARPANS Regulations.
- Provide a definition of controlled apparatus, which is sufficiently clear to capture new technology types of non-ionising apparatus. The existing provision of subsection 9(1)(a) refers to old types of controlled apparatus and does not adequately cover apparatus using new technologies.
- Amend exempt dealings to exclude lasers, optical fibre systems and klystrons from licensing requirements as they pose a very low radiation risk.
- Simplify the imposition of fees for licence applications so that fees reflect the actual cost of processing and assessing applications.
 - For source licence applications fees, the amendment simplifies the fees by setting a single fee, based on an estimate of the historical average cost incurred in processing these kind of licence applications, for each source group category regardless of the number of sources covered by an application.
 - For facility licence applications involving particle accelerators the fee is set based on the estimated historical average cost incurred in making a licensing decision for this kind of licence application.
 - For other kinds of more complex facility licence applications the amendment simplifies the application fee by setting a very low nominal

application fee covering an estimate of the actual cost of receipt and acknowledgement of the application at the time of lodgement and of checking the completeness of the submission and whether the application is capable of supporting a licensing decision. This nominal application fee replaces various existing fixed priced application fees for different types of listed controlled facilities. The proposed section 50 introduces a separate fee to recoup the cost of making a licensing decision on these more complex facility licence applications by applying ARPANSA's standard hourly charge-out rate to each actual hour spent in assessing the application ensuring that the total cost to an applicant of making the application corresponds exactly to the actual effort expended in making a licensing decision. The assessment fee takes into account the nominal application fee paid, to avoid any excess charging. If, for the purposes of assessing the application, the CEO incurs expenses for services provided by external consultants and suppliers, then under the proposed section 50 an applicant is required to pay an amount equal to those expenses. The proposed section 50 further provides for the applicant to be invoiced at regular intervals.

- Amend section 58 relating to preventing, controlling and minimising accidents by requiring the licence holder, following an accident, to review and update their plans and arrangements for managing safety to prevent a reoccurrence.

ARPANSA regulatory and scientific staff provided expert input to the proposed amendments. No consultation was undertaken among licence holders (all of whom are Commonwealth entities, with the exception of the publicly listed Silex Systems Limited) as the proposed amendments are considered minor and machinery in nature. The Office of Best Practice Regulation (OBPR) has exempted ARPANSA from the need to prepare a Regulatory Impact Statement for the proposed Regulations (OBPR ID: 42777).

Details of the amendments 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 the day after registration.

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

ATTACHMENT

Details of the proposed *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 1) Regulations 2021*

Section 1 – Name of regulation

This section provides the name of the regulations as the *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 1) Regulations 2021*.

Section 2 – Commencement

This section provides for the regulations to commence on the day after this instrument is registered.

Section 3 – Authority

This section provides that the regulations are 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

Australian Radiation Protection and Nuclear Safety Regulations 2018

Items 1, 2, 3, 5, 11, 16, and 19 – Sections 4 (definitions), Subsection 44(1) (table item 6, paragraph (a)), Paragraph 59(1)(aa) (definition of Disposal of Radioactive Waste Code) and Paragraph 81(a)

These amendments update references to various Codes and Standards mentioned in the ARPANS Regulations to ensure the reference is to the latest version of each document.

Items 4, 6, 17 and 20 - Section 4 (notes to definitions), Subsection 59(1) (note) and Section 81 (note)

These amendments update references to various Codes published by ARPANSA to note copies could in 2021 be viewed on ARPANSA's website <https://www.arpansa.gov.au>.

Items 7 and 8 - Section 4 (definitions and notes to definitions)

These amendments update references to various Codes mentioned in the ARPANS Regulations to ensure the reference is to the latest version of each document and to note copies could in 2021 be viewed on ARPANSA's website <https://www.arpansa.gov.au>.

Items 9 and 10 - Subsection 9(1) (paragraph (a) and paragraph (b))

These amendments would allow the regulation of new technology non-ionizing radiation apparatus by removing the old technology names of non-ionizing radiation apparatus set out in paragraph (a) and making it clear that the apparatus is the thing referred to in paragraph (b) that produces non-ionizing radiation.

Item 12 - Subsection 44(1) (table item 7)

This amendment exempts the following dealings with low hazard apparatus that emitted very low levels of non-ionizing radiation:

- a laser product with an accessible emission that does not exceed the accessible emission limits of a Class 3R laser product, as set out in AS/NZS IEC 60825.1:2014;
- an optical fibre communication system that does not exceed the hazard level 3R, as set out in AS/NZS IEC 60825.2:2011; and
- a klystron.

The intended effect of this amendment is to exempt these low hazard dealings from the operation of the ARPANS Act.

Item 13 - Division 4 (Application fees for licences) of Part 5 (Licences)

This amendment modifies and simplifies the method for imposing fees for the assessment of licence applications.

Division 4 of Part 5 prescribes the fee to accompany an application for a facility licence and the fee to accompany an application for a source licence.

This amendment repeals Division 4 of Part 5 and adds a new Section 49 prescribing the fee to accompany an application (the nominal fee) for a licence described in an item of the following table.

Table Item	Application	Fees (\$)
1.	Application for a facility licence, except an application covered by item 2	9,900
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	11,000
3.	Application for a source licence, if the application relates only to controlled apparatus or controlled material in Group 1	780
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	2,300
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	8,600

This amendment adds a new section 50 which sets out the fees payable for the service provided by the CEO of assessing an application for a facility licence covered by item 1 of the table in section 49 in deciding whether to issue the licence.

The fees payable are:

- \$165 for each hour, or part of an hour, spent in assessing the application, less \$9,900; and
- if, for the purposes of assessing the application, the CEO incurs expenses for services provided by external consultants and suppliers—an amount equal to those expenses.

This amendment also allows ARPANSA to issue invoices to the applicant for the licence to recover the costs incurred in assessing the application up to the date of each invoice.

Items 14 and 15 – Subsection 58(1) and Subsection 58(2)

These amendments introduce a new heading above subsection 58(1) making it clear that subsection 58(1) is about preventing accidents. This amendment adds a new

requirement on a licence holder (subsection 58(2)) where, following an accident, the licence holder, for the purposes of preventing a reoccurrence of the accident, is required to review and update the plans and arrangements that are relevant to the accident (including any internal safety approval system that authorised an activity that led to the accident). The licence holder, following the review, is required to provide a written summary of the outcome of their review within seven months of the accident happening or, if the CEO extends the period, then the extended period.

Item 18 - Section 61

Section 61 provides for the reviewing and updating of plans and arrangements for managing safety, and safety analysis reports.

This amendment makes it clear that any reviews and updates done for the purposes of subsection 58(5) should be disregarded when working out when plans and arrangements are required to be reviewed and updated for the purposes of section 61.

Item 21 - Part 8

The application provisions provide that the amendments to Division 4 of Part 5 referred to in item 13 above apply to applications for licences made on or after the commencement of the Regulations and the amendments to section 58 referred to in item 14 above apply to licences issued before, on or after the commencement and accidents occurring on or after the commencement of the Regulations.

Statement of Compliance with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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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 Regulations 2018 to modify and simplify the method for imposing fees for the assessment of licence applications.

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 modify and simplify the fees payable by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for applications seeking licences to deal with radiation equipment or radioactive sources or to engage in activities in relation to radiation facilities and nuclear installations.

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. Richard Colbeck, Minister for Senior Australians and Aged Care Services