

EXPLANATORY STATEMENT

Subject - *Australian Radiation Protection and Nuclear Safety Act 1998*
Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 2) Regulations 2021

The *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 2) Regulations 2021* (the Regulations) increases fees for licence applications under the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act).

The ARPANS Act established the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear 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 receives and assesses applications for licences and where appropriate 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.

Recovery of regulatory costs is achieved through the dual mechanisms of application fees applied to applicants seeking licences under the ARPANS Act and annual charges levied against existing licence holders under the authority of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*. The annual increase of 2 per cent in licence charges levied against existing licence holders is implemented in the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021*, which commences concurrently with the Regulations.

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 ARPANS Regulations) prescribe the fees for licence applications.

The Regulations amends the ARPANS Regulations as follows:

- Increase licence application fees by 2 per cent so that such fees reflect the actual cost of receiving and assessing applications.
- Update the publication details of any standards incorporated by reference in the ARPANS Regulations.

The Regulations ensures that the CEO of ARPANSA is able to recover the actual cost of regulating Commonwealth entities under the ARPANS Act by implementing the annual review of licence application fees and make other minor amendments.

An application for a licence under the ARPANS Act must be accompanied by an application fee and, for applications that are more complex, the applicant must pay an additional application assessment fee covering the cost of processing the application. The ARPANS

Regulations prescribe the nominal fees and the hourly charge out rate for assessing such applications.

Application fees were indexed annually from 2010 to 2018 based on the annual Wage Price Index (WPI) as reported by the Australian Bureau of Statistics for the twelve months ending at the September quarter each year, but this was not considered to be the most accurate reflection of the actual annual increase in the costs of providing regulatory services by a Commonwealth agency across the year.

Since 2019 indexation of licence application fees has been based on prescribed salary increases for ARPANSA staff in the ARPANSA 2017-2020 Enterprise Agreement, which has now been supplemented by a determination made under subsection 24(1) of the *Public Service Act 1999* to provide ARPANSA staff with an increase to salary of 2 per cent each year from 2020 to 2022.

The Regulations gives effect to a 2021 indexation of 2 per cent to licence fees, to ensure ARPANSA's full cost recovery of regulatory services.

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 Regulations (OBPR ID: 43795).

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

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

The Regulations commence on 1 July 2021.

Authority: Section 85 of the *Australian Radiation Protection and Nuclear Safety Act 1998*

Details of the *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 2) Regulations 2021*

Section 1 - Name of Regulations

This section provides the title of the Regulations is the *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 2) Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence on 1 July 2021.

Section 3 - Authority

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

Section 4 - Schedule(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

Item [1] - section 4 (definitions)

This amendment updates the reference to the radiation protection standard for limiting exposure to radiofrequency fields mentioned in the ARPANS Regulations to ensure the reference is to the latest version of the document. This document could in 2021 be viewed on, or accessed from, ARPANSA's website (<https://www.arpansa.gov.au>).

Item [2] - section 49

Section 49 of the Regulations has a table, which sets out the application fees. This amendment increases the amount of the application fees listed in the section 49 table by 2% as follows:

Table Item	Application	Existing Fee (\$)	New Fee (\$)
1.	Application for a facility licence, except an application covered by item 2	9,900	10,098

Table Item	Application	Existing Fee (\$)	New Fee (\$)
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	11,220
3.	Application for a source licence, if the application relates only to controlled apparatus or controlled material in Group 1	780	795
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	2,346
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	8,772

Item [3] – paragraph 50(2)(a)

This amendment increases the amount for each hour, or part of an hour, spent in assessing a licence application by 2%, from \$165 to \$168.

Item [4] – paragraph 50(2)(a)

This amendment increases the amount credited to the applicant in determining the assessment fee by 2%, from \$9,900 to \$10,098. The amount credited to the applicant in paragraph 50(2)(a) assures 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 to the ARPANS Regulations already paid by the applicant.

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 give effect to a 2021 indexation of 2 per cent to licence fees, to ensure ARPANSA's full cost recovery of regulatory services, and makes 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 give effect to a 2021 indexation of 2 per cent to licence 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