# EXPLANATORY STATEMENT

Subject - *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*

*Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021*

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021* (the Regulations) increases annual charges for licences under the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998* (the Licence Charges Act).

The *Australian Radiation Protection and Nuclear Act 1998* (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 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 Licence Charges Act. The annual increase of 2 per cent in application fees applied to applicants seeking a licence is implemented in the *Australian Radiation Protection and Nuclear Safety Amendment (2021 Measures No. 2) Regulations 2021*, which would commence concurrently with the Regulations.

The Licence Charges Act provides for annual charges to be levied on holders of licences issued under the ARPANS Act.

Section 6 of the Licence Charges 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 Licence Charges Act.

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018* (the Licence Charges Regulations) prescribe the annual licence charges to give effect to the Licence Charges Act.

Under sections 4 and 5 of the Licences Charges Act, holders of licences issued by the CEO of ARPANSA must pay an annual licence charge, which the Licence Charges Regulations prescribe.

The Regulations amends the Licence Charges Regulations to adjust the annual licence charges to make indexation increases to annual licence charges that reflect increases in regulatory costs.

The Regulations ensures the CEO of ARPANSA is able to recover the actual cost of regulating licence holders under the Licence Charges Act by implementing the 2021 annual review of licence charges.

Charges 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 charges 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 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 6 of the *Australian*

*Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*

# ATTACHMENT

**Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021***

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment 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 (Licence Charges) 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 7

Section 7 of the Licence Charges Regulations has a table that sets out the amounts of the annual licence charges that must be paid for facility licences that authorise specific activities that may be undertaken at or in relation to particular kinds of nuclear installations. This amendment increases the amount of the annual licence charges listed in the section 7 table by 2% as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Act authorised by licence | Existing annual charge ($) | New annual charge ($) |
| 1. | Preparing a site for a nuclear reactor designed:   1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. to have maximum thermal power less than 1 megawatt | 27,440 | 27,988 |
| 2. | Constructing a nuclear reactor designed: | 68,608 | 69,980 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | 1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. to have maximum thermal power less than 1 megawatt |  |  |
| 3. | Possessing or controlling a nuclear reactor:   1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. with maximum thermal power less than 1 megawatt | 27,440 | 27,988 |
| 4. | Operating a nuclear reactor:   1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. with maximum thermal power less than 1 megawatt | 137,220 | 139,964 |
| 5. | Decommissioning, disposing of or abandoning a nuclear reactor that:   1. was used for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. had maximum thermal power less than 1 megawatt | 68,608 | 69,980 |
| 6. | Preparing a site for a nuclear reactor designed:   1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. to have maximum thermal power at least 1 megawatt | 54,887 | 55,984 |
| 7. | Constructing a nuclear reactor designed:   1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. to have maximum thermal power at least 1 megawatt | 137,220 | 139,964 |
| 8. | Possessing or controlling a nuclear reactor: | 137,220 | 139,964 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | 1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. with maximum thermal power at least 1 megawatt |  |  |
| 9. | Operating a nuclear reactor:   1. ) for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. with maximum thermal power at least 1 megawatt | 1,056,597 | 1,077,728 |
| 10. | Decommissioning, disposing of or abandoning a nuclear reactor that:   1. was used for research or production of radioactive materials for industrial or medical use (including critical and subcritical assemblies); and 2. had maximum thermal power at least 1 megawatt | 274,441 | 279,929 |
| 11. | Preparing a site for a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9 | 13,720 | 13,994 |
| 12. | Constructing a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9 | 27,440 | 27,988 |
| 13. | Possessing or controlling a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9 | 13,720 | 13,994 |
| 14. | Operating a plant for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 9 | 68,608 | 69,980 |
| 15. | Decommissioning, disposing of or abandoning a plant that was used for preparing or storing fuel for use in a nuclear reactor described in any of items 1 to 10 | 27,440 | 27,988 |
| 16. | Preparing a site for:  (a) a radioactive waste storage facility designed to contain controlled materials with an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or | 13,720 | 13,994 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | (b) a radioactive waste disposal facility designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations |  |  |
| 17. | Constructing:   1. ) a radioactive waste storage facility designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or 2. a radioactive waste disposal facility designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations | 27,440 | 27,988 |
| 18. | Possessing or controlling:   1. ) a radioactive waste storage facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or 2. a radioactive waste disposal facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations | 13,720 | 13,994 |
| 19. | Operating:   1. ) a radioactive waste storage facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or 2. a radioactive waste disposal facility containing controlled materials that has an activity greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations | 68,608 | 69,980 |
| 20. | Decommissioning, disposing of or abandoning:   1. ) a radioactive waste storage facility that contained controlled materials and had an activity greater than the applicable activity level prescribed by section 10 of the ARPANS Regulations; or 2. a radioactive waste disposal facility that contained controlled materials and had an | 27,440 | 27,988 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | activity that was greater than the applicable activity level prescribed by section 11 of the ARPANS Regulations |  |  |
| 21. | Preparing a site for a facility to produce radioisotopes that is designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations | 27,440 | 27,988 |
| 22. | Constructing a facility to produce radioisotopes that is designed to contain controlled materials and have an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations | 68,608 | 69,980 |
| 23. | Possessing or controlling a facility producing radioisotopes and containing controlled materials that has an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations | 27,440 | 27,988 |
| 24. | Operating a facility producing radioisotopes and containing controlled materials that has an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations | 109,774 | 111,969 |
| 25. | Decommissioning, disposing of or abandoning a facility that formerly produced radioisotopes and contained controlled materials and had an activity greater than the applicable activity level prescribed by section 12 of the ARPANS Regulations | 68,608 | 69,980 |

# Item [2] - subsection 8(2)

Subsection 8(2) of the Licence Charges Regulations has a table which sets out the annual charges for prescribed radiation facilities not formerly used for weapons tests or radioactive ores. This amendment increases the amount of the annual licence charges listed in the subsection 8(2) table by 2% as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Kind of prescribed radiation facility | Existing annual charge ($) | New annual charge ($) |
| 1. | Particle accelerator that:   1. ) has, or is capable of having, a beam energy greater than 1 MeV; or 2. can produce neutrons | 14,637 | 14,929 |
| 2. | Irradiator containing more than 1015 Bq of a controlled material | 14,637 | 14,929 |
| 3. | Irradiator:   1. containing more than 1013 Bq of a controlled material; and 2. either:    1. ) not including shielding as an integral part of its construction; or    2. including as an integral part of its construction shielding that does not prevent a person from being exposed to the source or does not shield a source during the operation of the irradiator | 14,637 | 14,929 |
| 4. | Facility for the production, processing, use, storage, management or disposal of:   1. ) unsealed sources for which the result of the activity value division steps is greater than 106; or 2. sealed sources for which the result of the activity value division steps is greater than 109 | 29,278 | 29,863 |

# Item [3] - subsection 8(3)

Subsection 8(3) of the Licence Charges Regulations has a table which sets out the annual charges for prescribed radiation facilities formerly used for weapons tests or radioactive ores. This amendment increases the amount of the annual licence charges listed in the subsection 8(3) table by 2% as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Act authorised by licence | Existing annual charge ($) | New annual charge ($) |
| 1. | Decommissioning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site | 48,796 | 49,771 |

|  |  |  |  |
| --- | --- | --- | --- |
| 2. | Disposing of or abandoning a prescribed radiation facility formerly used as a nuclear or atomic weapon test site | 32,529 | 33,179 |
| 3. | Decommissioning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores | 48,796 | 49,771 |
| 4. | Disposing of or abandoning a prescribed radiation facility formerly used for mining, processing, using, storing, managing or disposing of radioactive ores | 32,529 | 33,179 |

# Item [4] - section 9

Section 9 of the Licence Charges Regulations has a table that sets out the annual charges for facility licences for prescribed legacy sites. This amendment increases the amount of the annual licence charges listed in the section 9 table by 2% as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Act authorised by licence | Existing annual charge ($) | New annual charge ($) |
| 1. | Possessing or controlling a prescribed legacy site | 15,161 | 15,464 |
| 2. | Remediating a prescribed legacy site | 229,049 | 233,629 |
| 3. | Abandoning a prescribed legacy site | 30,537 | 31,147 |

# Item [5] - subsection 10(1)

Subsection 10(1) has a table that sets out the annual facility licence charges for three particular licence holders. This amendment increases the amount of the annual licence charges listed in the subsection 10(1) table by 2% as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Name | Existing annual charge ($) | New annual charge ($) |
| 1. | Australian National University | 43,911 | 44,789 |
| 2. | Australian Nuclear Science and Technology Organisation | 3,094,133 | 3,156,015 |

|  |  |  |  |
| --- | --- | --- | --- |
| 3. | Department of Defence | 197,989 | 201,948 |

# Item [6] - section 12

This amendment increases the amount of the annual licence charge for each controlled apparatus or controlled material held by the licence holder by 2%, from $676 to $689.

# Item [7] - subsection 13(1)

Subsection 13(1) has a table that sets out the annual source licence charges for seven particular licence holders. This amendment increases the amount of the annual licence charges listed in subsection 13(1) table by 2% as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Table Item | Name | Existing annual charge ($) | New annual charge ($) |
| 1. | Australian Federal Police | 82,743 | 84,397 |
| 2. | Australian National University | 145,805 | 148,721 |
| 3. | Australian Nuclear Science and Technology Organisation | 217,782 | 222,137 |
| 4. | Australian War Memorial | 26,078 | 26,599 |
| 5. | Commonwealth Scientific and Industrial Research Organisation | 520,366 | 530,773 |
| 6. | Department of Defence | 273,592 | 279,063 |
| 7. | National Measurement Institute | 26,560 | 27,091 |

# Statement of Compliance with Human Rights

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

# Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021

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 annual licence charges, to ensure ARPANSA’s full cost recovery of regulatory services.

# 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 annual licence charges payable by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for existing licence holders under the authority of the Licence Charges Act.

# 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