

## EXPLANATORY STATEMENT

### Select Legislative Instrument No. 331, 2022

Issued by the Authority of the Minister for Foreign Affairs

*Nuclear Non-Proliferation (Safeguards) Act 1987*

*Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2022*

The *Nuclear Non-Proliferation (Safeguards) Act 1987* (Safeguards Act) makes provision in relation to the non-proliferation of nuclear weapons and establishes a system for the imposition and maintenance of nuclear safeguards in Australia. It also gives effect to certain obligations that Australia has under international agreements on the peaceful use of nuclear material and facilities.

Section 74 of the Safeguards Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Safeguards Act, prescribing matters required or permitted by the Safeguards Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Safeguards Act.

Section 70 of the Safeguards Act provides that powers, discretions, duties or functions under the Act are to be exercised in accordance with specified international agreements identified in the Safeguards Act, or prescribed in the *Nuclear Non-Proliferation (Safeguards) Regulations 1987* (the Principal Regulations).

The *Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2022* (the Regulations) amend the Principal Regulations in two ways. Firstly, they update the list of prescribed international agreements by adding the following to the list of prescribed international agreements:

- *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland on Cooperation in the Peaceful Uses of Nuclear Energy*, date signed on behalf of Australia 21 August 2018.

This Agreement entered into force on 1 January 2021 to ensure that the United Kingdom continues to meet Australia's uranium export policy requirements. Previously, the United Kingdom was covered by two Agreements, one which no longer applies, and the other has now been superseded. Prescribing this Agreement in the Safeguards Act publicly confirming its implementation and expressly links it to the functions of the Director General ASNO under the Safeguards Act.

Consultation and the regulatory impact for the Agreement was addressed in the Australian Treaty National Interest Analysis [2018] ATNIA 12. The Australian uranium industry, the Uranium Council and industry stakeholders indicated support to the Agreement at that time. Accordingly, additional consultation was not considered necessary in relation to this amendment, it being machinery in nature.

Secondly, the Regulations amend the charge rate used to determine the charge imposed on Australian producers of uranium ore concentrate for the cost of safeguards and security

activities undertaken by the Australian Safeguards and Non-Proliferation Office (ASNO), in line with the Australian Government's Charging Framework policy.

The *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* imposes a charge on producers of uranium ore concentrates under certain circumstances. Section 69A of the Safeguards Act specifies that the charge is payable on 1 December each year and that the amount of the charge payable by a producer is the lesser of \$500,000 or an amount prescribed by the Principal Regulations, expressed as a charge rate in cents per kilogram of uranium in the uranium ore concentrates produced by the person in the previous financial year.

The Regulations amend the charge rate to 18.7839 cents per kilogram of uranium in the uranium ore concentrates produced. The charge rate reflects actual costs in the previous financial year (2021-22) of relevant safeguards and security activity by ASNO, and the total production and export of uranium ore concentrate in Australia. The charge is payable in the 2022-23 financial year and later financial years.

On 18 January 2006, the Office of Best Practice Regulation (OBPR) advised that as the direct effect on business is minor in nature a Regulation Impact Statement (RIS) is not mandatory, therefore an exception applies. The OBPR also advised that subsequent amendments to the charge per kilogram to uranium producers will not require a RIS. The two uranium producers have been consulted on the change to the uranium producers charge rate and were provided with an opportunity to comment.

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Legislative Instrument does not engage any of the applicable rights or freedoms described in the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, this Legislative Instrument is compatible with human rights.

The Regulation commenced on the day after registration and is a legislative instrument for the purposes of the *Legislation Act 2003*.