

## **EXPLANATORY STATEMENT**

Subject - *Australian Radiation Protection and Nuclear Safety Act 1998*

*Australian Radiation Protection and Nuclear Safety Amendment (2023 Measures No. 1) Regulations 2023*

The instrument supports the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) in the recovery of the increased costs of processing licence applications and makes other minor machinery amendments.

The *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act) has been established to protect the health and safety of people, and the environment, from the harmful effects of radiation. The ARPANS Act established the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Safety Agency 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.

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 Principal Regulations) prescribe the fees for licence applications to give effect to the ARPANS Act.

The purpose of *Australian Radiation Protection and Nuclear Safety Amendment (2023 Measures No. 1) Regulations 2023* (the Regulations) is to amend the Principal Regulations to:

- give effect to an annual three per cent increase in fees for applications for licences under the ARPANS Act, from 1 July 2023; and
- make other minor amendments that are machinery in nature to streamline administration of the ARPANS Act and to make the Principal Regulations easier to understand for licence holders.

The Regulations ensure the CEO of ARPANSA is able to recover the actual cost of processing applications for licences issued under the ARPANS Act, as part of ARPANSA's commitment to full cost recovery of ARPANSA's regulatory services. Recovery of the costs of processing applications for licences is achieved through fees under the authority of the ARPANS Act. The annual indexation amount of three per cent is based on the increase in the actual costs of wages of three per cent during the financial year 2023-2024. The annual increase of three per cent in fees for processing of applications for licences is achieved by giving effect to the Regulations.

All licence holders have been consulted about the proposed amendments. All licence holders are Commonwealth entities, with the exception of the publicly listed Silex Systems Limited. ARPANSA wrote to licence holders about the proposed amendments inviting feedback on the amendments over the consultation period of 11 November 2022 to 16 December 2022. No negative feedback was received by ARPANSA. Licence holders were overall supportive of the proposed amendments

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 1 July 2023.

Details of the Regulations are set out in the Attachment.

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

**Details of the *Australian Radiation Protection and Nuclear Safety Amendment (2023 Measures No. 1) Regulations 2023***

**Section 1 - Name of Regulations**

This section provides that the title of the Regulations is the *Australian Radiation Protection and Nuclear Safety Amendment (2023 Measures No. 1) Regulations 2023*.

**Section 2 - Commencement**

This section provides for the Regulations to commence on 1 July 2023.

**Section 3 - Authority**

This section provides that the *Australian Radiation Protection and Nuclear Safety Amendment (2023 Measures No. 1) Regulations 2023* 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**

**Items [1], [2], [3], [4] and [5] - Section 49**

These items increase the amount of the application fees listed in the section 49 table by three per cent as follows:

Table Item	Application	Existing Fee (\$)	New Fee (\$)
1.	Application for a facility licence, except an application covered by item 2	10,299	10,607
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	11,444	11,787
3.	Application for a source licence, if the application relates only to controlled apparatus or controlled material in Group 1	810	834
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	2,392	2,463

Table Item	Application	Existing Fee (\$)	New Fee (\$)
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	8,947	9,215

#### **Item [6] – Paragraph 50(2)(a)**

This item repeals the existing paragraph and substitutes to increase the amount for each hour, or part of an hour, spent in assessing a licence application by three per cent from \$171 to \$176. This item increases the amount credited to the applicant in determining the assessment fee by three per cent from \$10,299 to \$10,607. 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 of the Regulations already paid by the applicant.

#### **Item [7] - After section 57A**

This item inserts a new section 57B after section 57A requiring the holder of a licence to have in place arrangements that demonstrate the licence holder's preparedness to respond effectively to an emergency involving radiation exposure resulting from controlled materials, controlled apparatus or controlled facilities described in the licence. This amendment is required so that licence holders have an obligation to be prepared for emergencies and be able to respond to any emergency likely to arise from dealings with sources or activities at a facility. The effect of this amendment is to promote and strengthen a licence holder's emergency preparedness and response arrangements consistent with radiation protection in Australia.

This item also inserts a new section 57C requiring the holder of a licence to have in place arrangements to ensure the effective security of controlled materials, controlled apparatus and controlled facilities. This amendment is required so that the regulations include a clear obligation for licence holders to have effective arrangements and management for security, and to align the regulations with security practices for nuclear installations and radiation facilities in Australia. The effect of this amendment is to clarify licence holders' understanding of what is required to ensure effective arrangements and management of security of controlled apparatus, controlled material and controlled facilities.

## **Items [8] and [9] - Section 62 and at the end of section 62**

Items [8] and [9] amend section 62 so that a licence holder is required to maintain an accurate inventory of the controlled apparatus and controlled materials that the licence holder deals with, except to the extent that the licence makes other arrangements for such an inventory. This amendment is required because the general rule to maintain an inventory for sources does not fit all licensing situations. For example, sources may be shared by two or more licence holders. The licence holder that owns or controls the source is ultimately responsible for the security and safety of that source, which includes tracking via an accurate source inventory. The other licence holder may not need to duplicate the same sources in their inventory. The effect of this amendment is to allow licences to make specific arrangements for maintaining an inventory of sources and make section 62 easier to administer and for licence holders to understand.

## **Item [10] – Section 65 (heading)**

This item repeals the existing section 65 heading and substitutes the heading “*Disposal of controlled apparatus, controlled materials and controlled facilities*”. This amendment is required to make the section 65 heading more accurate. The effect of this amendment is that the section 65 heading is easier for licence holders to understand.

## **Item [11] – Subsections 65(1) and (2)**

This item repeals the existing subsections 65(1) and (2) and substitutes:

### *Disposal of controlled apparatus and controlled materials*

- (1) The holder of a licence must not dispose of controlled apparatus or controlled materials unless the licence holder:
  - (a) has approval from the CEO to dispose of the controlled apparatus and controlled material; or
  - (b) transfers the controlled apparatus or controlled material to another licence holder in accordance with subsection (2); or
  - (c) returns the controlled apparatus to the supplier of the controlled apparatus in accordance with paragraph (3A)(a); or
  - (d) disposes of the controlled apparatus, by rendering the controlled apparatus permanently inoperable as a controlled apparatus, in accordance with paragraph (3A)(b).
- (2) The holder of a licence may, without the approval of the CEO, dispose of controlled apparatus or controlled materials described in the licence by way of transfer to another person (the **transferee**) if the disposal is not covered by subsection (3A) and both of the following apply:
  - (a) the transferee is the holder of a facility licence or a source licence;
  - (b) the transferee’s licence authorises the transferee to deal with the controlled apparatus or controlled materials.

The new subsections 65(1) and (2) provides the licence holder with four options to dispose of controlled material or controlled apparatus:

- The first option for disposal is that the licence holder may dispose of controlled material or controlled apparatus after obtaining prior approval from the CEO.

- A second option for disposal is that the licence holder may without approval of the CEO transfer the controlled apparatus or controlled material to another licence holder under certain conditions.
- A third option for disposal is that the licence holder may without approval of the CEO dispose of the controlled apparatus by returning certain controlled apparatus to the supplier of the controlled apparatus in certain circumstances.
- A fourth option for disposal is that the licence holder may without approval of the CEO dispose of certain controlled apparatus by rendering the controlled apparatus permanently inoperable as a controlled apparatus in certain circumstances.

This amendment is required to make subsections 65(1) and (2) easier for licence holders to understand regarding the first two options for disposal. The amendment is also required to give the licence holder a third and fourth option for disposal of certain controlled apparatus which do not require the approval of the CEO under certain circumstances.

The effect of the amendment is to make it easier for a licence holder to dispose of certain apparatus to the supplier and render certain apparatus inoperable without the administrative burden of seeking prior approval of the CEO.

#### **Item [12] - Subsection 65(3)**

This item omits from subsection 65(3) the reference to “paragraph (2)(b)”, and substitutes “subsection (2)”. This amendment is required for subsection 65(3) to correctly refer to new subsection 65(2) which sets out circumstances where the licence holder may without approval of the CEO transfer the controlled apparatus or controlled material to another licence holder. The effect of the amendment is that the new subsection 65(3) correctly refers to subsection 65(2).

#### **Item [13] - After subsection 65(3)**

This item after subsection 65(3) inserts:

- (3A) The holder of a licence may, without the approval of the CEO, dispose of Group 1 controlled apparatus that is described in the licence and that does not contain controlled material:
- (a) by returning the controlled apparatus to the person that supplied the controlled apparatus to the holder of the licence; or
  - (b) by rendering the controlled apparatus permanently inoperable as a controlled apparatus.

This item is required to allow the licence holder without the approval of the CEO to dispose of certain controlled apparatus by returning that controlled apparatus to the supplier of the controlled apparatus in certain circumstances, and to allow the licence holder without the approval of the CEO to dispose of certain controlled apparatus by rendering the controlled apparatus permanently inoperable in certain circumstances. The effect of the amendment is to make it easier for a licence holder to dispose of certain apparatus to the supplier and render apparatus inoperable without the administrative burden of seeking prior approval of the CEO.

#### **Item [14] - Before subsection 65(4)**

This item inserts the heading for “*Disposal of controlled facilities*” before subsection 65(4). This amendment is required to assist the licence holder to understand that subsection 65(4)

applies to disposal of controlled facilities. The effect of this amendment is that the licence holder easily understands that subsection 65(4) applies to disposal of controlled facilities.

#### **Item [15] - Subsection 65(4)**

This item omits “, or transfer to the possession of another person,” from subsection 65(4). It is intended that the existing restriction on transferring to the possession of another person is covered by the words ‘*must not dispose of*’ and that this amendment simplifies subsection 65(4). The effect of this amendment is that subsection 65(4) is easier to administer and easier for licence holders to understand.

#### **Item [16] - Subsection 65(5)**

This item repeals the subsection (not including the heading), and substitutes:

- (5) Subsection (1), (2), (3), (3A) or (4) does not apply to the extent that the licence makes other arrangements for a matter mentioned in that subsection.

The new subsection 65(5) has the same effect as the existing subsection 65(5) which provides that subsections (1), (2), (3) and (4) do not apply to the extent that the licence makes other arrangements for a matter mentioned in the subsection. New subsection 65(5) also has the effect that the new subsection (3A) does not apply to the extent that the licence makes other arrangements for a matter mentioned in the subsection.

#### **Item [17] - Paragraph 84(e)**

This item repeals paragraph 84(e), and substitutes:

- (e) the *Radiation Protection and Control Act 2021* (SA);

This amendment is required to ensure that activities of controlled or permitted persons covered by the operation of the *Australian Radiation Protection and Nuclear Safety Act 1998* are not inadvertently covered by the *Radiation Protection and Control Act 2021* (SA), which came into effect on 11 February 2023, replacing the *Radiation Protection and Control Act 1982* (SA).

#### **Item [18] – Part 8**

This amendment amends Part 8 of the Regulations to add a new heading for *Division 5 - Australian Radiation Protection and Nuclear Safety Amendment (2023 Measures No. 1) Regulations 2023*.

This amendment adds a new section 97 following the new Division 5 heading to provide a definition of the *amending instrument* and the *commencement time* of the *amending instrument*.

The amendment adds a new section 98 (heading) for *Fees*.

This amendment adds a new subsection 98(1) to the Regulations and makes those amendments of section 49 made by the amending instrument, as referred to in items 1 to 5 above, apply in relation to applications made after the commencement time. This allows the recovery of ARPANSA’s actual costs of processing licence applications.

This amendment adds a new subsection 98(2) to the Regulations and makes those amendments of section 50 made by the amending instrument, as referred to in item 6 above, apply in relation to applications made after the commencement time. This allows the recovery of ARPANSA's actual costs of processing licence applications.

This amendment adds a new subsection 98(3) to the Regulations and provides that despite the amendments of section 50 by the amending instrument, as referred to in item 6 above, the existing section 50 continues to apply, in relation to applications made before the commencement time, as if those amendments had not been made; and the fee for each hour, or part of an hour, spent after the commencement time in assessing the application were \$176.

The amendment adds a new section 99 (heading) for *Licence conditions*.

This amendment adds a new subsection 99(1) to the Regulations and provides that sections 57B and 57C as inserted by the amending instrument, as referred to in item 7 above, apply in relation to licences issued before, at or after the commencement time.

This amendment adds a new subsection 99(2) to the Regulations and provides that the amendments of section 65 made by the amending instrument, as referred to in items 10 to 16 above, apply in relation to licences issued before, at or after the commencement time.



## **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 Amendment (2023 Measures No. 1) Regulations 2023**

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 an annual three per cent increase in fees for applications for licences under the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act), from 1 July 2023, and makes other minor machinery 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 an annual three per cent increase in fees for applications for licences under the ARPANS Act, from 1 July 2023, and makes other minor machinery amendments.

#### **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. Ged Kearney**  
**Assistant Minister for Health and Aged Care**  
**Parliamentary Secretary to the Minister for Health and Aged Care**