

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Foreign Affairs

Nuclear Non-Proliferation (Safeguards) Act 1987

Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023

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 2023* (the Regulations) amend the Principal Regulations by amending 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 15.1953 cents per kilogram of uranium in the uranium ore concentrates produced. The charge rate reflects actual costs in the previous financial year (2022-23) of relevant safeguards and security activity by ASNO, and the total production and export of Australian uranium ore concentrate. The charge is payable in the 2023-24 financial year and later financial years.

On 18 January 2006, the Office of Best Practice Regulation (now the Office of Impact Analysis (OIA)) 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 OIA also advised that subsequent amendments to the charge per kilogram to uranium producers will not require a RIS. The two uranium producers, BHP and Heathgate Resources, have been

consulted on the change to the uranium producers charge rate and were provided with an opportunity to comment, and neither had any objection.

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

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) and 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview

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*.

The *Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023* (the Regulations) amend the *Nuclear Non-Proliferation (Safeguards) Regulations 1987* (Principal Regulations) by amending 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 *Nuclear Non-Proliferation (Safeguards) Act 1987* 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.

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Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms described in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023

Section 1 - Name of the Regulations

This section provided that the title of the Regulations is the *Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023*.

Section 2 - Commencement

This section provided for the Regulations to commence on the day after the instrument is registered.

Section 3 - Authority

This section provided that the *Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023* was made under the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

Section 4 – Schedule(s)

This section provided that each instrument that was specified in a Schedule to this instrument was 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] - Paragraph 6(a)

Paragraph 6(a) of the Principal Regulations would provide that the charge rate is 15.1953 cents per kilogram of uranium produced. This value has decreased from 18.7839 cents per kilogram of uranium produced in FY2021-22. The charge to each producer is proportional to the quantity of uranium they produced. The charge rate is based on ASNO's relevant costs and the total quantity of Australian uranium ore concentrate produced in the previous financial year. As the quantity of uranium produced in 2022-23 increased compared to 2021-22, the charge rate has decreased.

Item [2] – Regulation 7

This item repealed and substituted regulation 7. This item determines that the charge for FY2022-23 is payable in FY2023-24 and that the same charge rate can be used in future years if the Principal Regulations are not updated.

The practical effect of this change is that the charge is paid retrospectively to reflect the actual cost to ASNO and quantities of uranium produced. It also enables the option of using the same charge rate in the future years.