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NUCLEAR NON-PROLIFERATION (SAFEGUARDS) BILL 1986

Date introduced: 4 June 1986
House: Senate
Presented by: Senator the Hon. Gareth Evans,
Minister for Resources and Energy

DIGEST OF BILL

Purpose

To give legislative effect to Australia's international nuclear non-proliferation obligations, to establish a system of permits for the possession and transport of nuclear material and to provide a legislative basis for the Australian Safeguards Office.

Background

The Nuclear Non-Proliferation Treaty (NPT) was negotiated in the mid-1960s, first between the United States and the Soviet Union and then by the Eighteen Nation Disarmament Committee.[1] It was endorsed by the General Assembly of the United Nations in 1968 and entered into force in 1970. The establishment of the NPT was a major step forward in international agreements for the limitation and control of nuclear armaments. Article III of the NPT requires each non-nuclear weapon State to accept International Atomic Energy Agency (IAEA) safeguards on all nuclear activities carried out within its territory. Australia became a party to the NPT in January 1973.

The IAEA came into being in 1957 when its Statute entered into force.[2] The Statute states two objectives for the IAEA, i.e., to enlarge the contribution of atomic energy to peace, health and prosperity throughout the world and to ensure that the assistance provided by it is not used in such a way as to further any military purpose. The technical development and implementation of the safeguards required by Article III of the NPT was entrusted to the IAEA, which applies those safeguards in order to verify that countries are complying with their NPT obligations not to

manufacture or otherwise acquire nuclear explosive devices. Australia signed a Safeguards Agreement with the IAEA (referred to in the Bill as the Agency Agreement) in July 1974.

Physical protection measures are intended to protect nuclear material and facilities from theft or sabotage, especially by terrorists.[3] Physical protection can also be regarded as one of the measures which reduce the risk of proliferation and may overlap with some safeguard measures verified by the IAEA such as containment and surveillance. The Convention on the Physical Protection of Nuclear Material (the Convention), concluded in 1980 under IAEA auspices, provides for certain levels of physical protection during international shipment of nuclear material. It also defines certain serious offences involving nuclear materials which parties to the Convention have to make punishable.

The Bill will give legislative effect to Australia's obligations under the NPT, Agency Agreement and the Convention.

Main Provisions

The objects of the Bill are contained in clause 3 and include giving effect to both the Non-Proliferation Treaty and the Physical Protection Convention. Clause 4 defines words and phrases used in the Bill. The Bill is expressly applied to all nuclear material, excluding ore but including associated material and associated equipment (clause 8).

Clauses 9 to 22 form Part II of the Bill which will provide a system for controlling nuclear material, unless such material is specifically exempted under the terms of the Part. A person wishing to possess or transport nuclear material will have to apply for a permit (clause 12). The Minister may grant a permit for a person to possess nuclear material. Such a permit may be subject to the restrictions or conditions, such as the keeping of records accounting for the nuclear material (clause 13). The Minister will not be able to grant the owner or operator of nuclear facilities such a permit unless the Director of Safeguards is satisfied that appropriate procedures and adequate physical security can be applied to the facility and to the material (clause 14). Similarly the Minister will be able to grant permits for the transport of nuclear material and associated items (clause 16).

Any document containing information, not publicly available, about the design or operation of equipment for the enrichment of nuclear material, the reprocessing of irradiated nuclear material or the production of heavy water or nuclear devices will only be able to be communicated pursuant to an authority given by the Minister (clause 18).

The Minister will be able to revoke a permit where a permit holder breaches a condition of the permit, even if the breach takes place outside Australia (clause 19). Grants, variations or revocations of permits or authorities will have to be published in the Gazette (clause 20). Clause 22 provides for review of the Minister's decisions with respect to the granting of permits or authorities. Subject to a number of provisos, the Minister will be able to declare specified nuclear material to be exempt from the operation of the permit system (clause 11).

Part III of the Bill, containing clauses 23 to 41, deals with offences. A person who has nuclear material without a permit will be guilty of an offence and liable to a fine of \$10 000 or five years imprisonment, or both (in the case of companies a \$50 000 fine) (clause 23). Sub-clause 23(2) will extend the prohibition to possession beyond Australia of nuclear material bound to or from Australia or on Australian ships and planes. People possessing nuclear material without a permit, simply in their capacity as carriers will not be committing an offence (clause 24).

A penalty of a \$5000 fine or imprisonment for two years or both (in the case of companies a fine of \$25 000) will result on a conviction for any of the following offences:

- . breaching a condition of a permit or authority (clause 25);
- . communicating information of the type referred in clause 18 without authority (clause 26);
- . putting exempt nuclear material together with non-exempt material and failing to notify the Minister (clause 27);
- . interfering with a containment or surveillance device (clause 28);

- . constructing a nuclear facility without notifying the Director of Safeguards (clause 29); or
- . providing false or misleading information to someone performing a duty under this Bill (clause 30).

Proposed Division 2 of Part III, clauses 32 to 38, gives effect to Australia's obligations under the Physical Protection Convention by providing penalties for a number of offences. Clause 38 extends the operation of this Division to acts done outside Australia where Australian citizens, or Australian ships or planes or nuclear material journey bound to or from Australia is involved. A penalty of a \$20 000 fine or imprisonment for ten years or both will result from a conviction for any of the following offences:

- . stealing nuclear material (clause 33);
- . demanding nuclear material by threats (clause 34);
- . using nuclear material to cause personal injury or damage to property (clause 35);
- . threatening to use nuclear material to cause personal injury or damage to property (clause 36); or
- . threatening to steal nuclear material in order to compel a person into doing some act (clause 37).

Any article used in any of the above offences may be forfeited to the Commonwealth (clause 39). When a person is being tried for any of the offences the Judge may order that the public be excluded from the hearing and that proceedings not be published (clause 40).

A Director of Safeguards will be established by clause 42. The Director's functions will include ensuring the effective operation of the Australian safeguards systems, the carrying out of safeguard obligations imposed by international agreements and the monitoring of compliance to international agreements by parties other than Australia

(clause 43). The Director will have to comply with any Ministerial direction (clause 44) and report to the Minister at least annually (clause 51).

An Australian Safeguards Office will be established by clause 54. The Office will consist of the Director of Safeguards and staff appointed under the Public Service Act 1922 (clause 55).

Inspectors may be appointed by the Minister for the purpose of the Bill (clause 57). Clause 59 will give Inspectors broad powers to enter premises and vehicles, either with the occupier's consent or by a warrant, and conduct searches to ascertain whether safeguard requirements have been met or obtain evidence of an offence against the Bill having been committed (clause 61). In circumstances of urgency an application for a search warrant, for an offence-related search, may be made over the telephone (clause 62). Clause 63 will give inspectors power to circumvent the other provisions of this proposed Division where the seriousness and urgency of the situation calls for immediate action without prior authorisation. The occupier of premises or the controller of a vehicle who fails to assist an inspector conduct a search will be committing an offence and liable to a \$1000 fine or 6 months imprisonment or both (clause 65). A \$1000 fine is also prescribed by clause 66 for the offences of failing to give name and address details or produce a permit when requested to do so by an inspector. The Director of Safeguards will have power to seize nuclear material and return it to a country when Australia is obliged to do so by reason of an agreement with that country (clause 67).

Part V of the Bill contains clauses 70 to 74 and deals with miscellaneous matters. Clause 70 ensures that the powers to be exercised under the Bill must be consistent with the international agreements to which the Bill is designed to give effect. The Minister will generally be able to delegate powers to the Director or an officer of the Department (clause 72). The Governor-General will be able to make regulations consistent with the Bill and in particular provide for the imposition of penalties of a \$1000 fine or less (clause 74).

The Schedules to the Bill are:

- Schedule 1 - an extract from the International Atomic Energy Agency (IAEA) Statute, containing the definition of "nuclear material" for the purposes of the Bill.
- Schedule 2 - Treaty on the Non-Proliferation of Nuclear Weapons.
- Schedule 3 - Agreement between Australia and the IAEA for the application of safeguards.
- Schedule 4 - Convention on the Physical Protection of Nuclear Material.
- Schedule 5 - "prescribed international agreements".

This Bill forms part of a legislative package comprising:

- Nuclear Non-Proliferation (Safeguards) Bill 1986**
(Digest 86/94)
- South Pacific Nuclear Free Zone Treaty Bill 1986**
(Digest 86/95)
- Environment Protection (Sea Dumping) Amendment Bill**
1986 (Digest 86/90)

For further information, if required, contact the Science, Technology and Environment Group.

15 August 1986

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

References

1. Australian Science and Technology Council (ASTECC)
Australia's Role in the Nuclear Fuel Cycle - A Report to
the Prime Minister, AGPS, 1984, p.102.
2. Ibid., p.107.
3. Ibid., p.123.

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