

Chapter 3

Provisions of the Bill

3.1 The provisions of the bill are to implement Australia's commitment to international measures which increase the physical protection of nuclear material and facilities. In particular, the bill is intended to meet the new requirements of the July 2005 amendments to the Convention on the Physical Protection of Nuclear Material (Physical Protection Convention). As noted in Chapter 2, the amended Convention makes it legally binding for States to protect nuclear facilities and material on peaceful domestic use, storage and transport. To this end, the bill makes amendments to the *Nuclear Non-Proliferation (Safeguards) Act 1987*, the *Comprehensive Nuclear Test Ban Treaty Act*, the *Chemical Weapons (Prohibition) Act 1994*, the *Australian Federal Police Act 1979*, the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*.¹

3.2 Most of the bill's amendments are made to the *Nuclear Non-Proliferation (Safeguards) Act 1987*. This Act gives legislative effect to Australia's international nuclear non-proliferation obligations, establishes a system of permits for the possession and transportation of nuclear material and provides a legislative basis for the Australian Safeguards Office.² The bill inserts a new subsection 13(3)(da) into this Act stating that a permit to possess nuclear material may be granted provided 'that measures are taken that are consistent with Australia's obligations under the Physical Protection Convention'. The bill also amends this Act to:

- introduce new offences and increase penalties for various offences under the Part III of the Act;
- extend the geographical scope of jurisdiction for various offences under Part III; and
- require a permit to decommission of a facility.

New offences under the Nuclear Non-Proliferation (Safeguards) Act 1987

3.3 The bill introduces three new offences and imprisonment penalties under the Safeguards Act.

- Under a new section 29A, a person found guilty of decommissioning a facility without a permit faces an imprisonment penalty of five years (see paragraph 3.7).

1 The last two Acts address extradition provisions in Articles 11A and 11B of the amended Physical Protection Convention. (see paragraph 2.12)

2 Nuclear Non-Proliferation (Safeguards) Bill 1986, Bills Digest 86/94, Legislative Research Service, Department of the Parliamentary Library, <http://www.aph.gov.au/library/pubs/bd/1986/1986bd094.pdf> (accessed 21 December 2006).

- Under a new section 34A, a person commits an offence if s/he carries, sends or moves nuclear material into or out of Australia or a foreign country. A person found guilty of this offence faces an imprisonment penalty of 10 years.
- Under a new section 35A, a person found guilty of interfering with the operation of a nuclear facility—and who does so intending or knowing that the act will cause injury or damage to property—faces an imprisonment penalty of 20 years.

Lengthened penalties under Nuclear Non-Proliferation (Safeguards) Act 1987

3.4 The bill also lengthens the maximum term of various imprisonment offences under Part III of the *Nuclear Non-Proliferation (Safeguards) Act 1987*. It contains five provisions to lengthen existing imprisonment penalties in the Act.

- Under section 23 (1), the maximum imprisonment term for a person found guilty of possessing nuclear material without a permit will be lengthened from 'not more than five years' to 'not more than ten years'.
- Under section 26(1), the maximum imprisonment term for a person found guilty of communicating information about nuclear technology (as defined in section 4(1) of the Act) will be lengthened from 'not more than two years' to 'not more than ten years'.
- Under section 26A(1), the imprisonment penalty for a person found guilty of communicating information that compromises the security of nuclear material will be lengthened from two years to eight years.
- Under section 31(1), the maximum imprisonment term for a person found guilty of obstructing or hindering an Agency inspector in the performance of a duty under the Act will be lengthened from 'not more than six months' to 'not more than two years'.
- Under section 35, the maximum imprisonment term for a person found guilty of using nuclear material to cause serious damage to any person or substantial damage to property will be lengthened from 10 years to 20 years.

Extending the geographical scope of jurisdiction for offences under various Acts

3.5 The bill also amends the *Nuclear Non-Proliferation (Safeguards) Act 1987* to broaden the geographical scope of jurisdiction for various offences under Part III of the Act. These amendments are based on category B of section 15.2 of the *Criminal Code*. This section defines an offence as occurring wholly or partly in Australia or wholly outside Australia when the person is a citizen or resident of Australia.³ The bill's purpose in extending geographical jurisdiction is to strengthen Australia's ability

3 The Criminal Code, section 15.2, p. 39.

to act against the proliferation of nuclear and chemical weapons.⁴ The bill amends subsections of the *Nuclear Non-Proliferation (Safeguards) Act 1987* dealing with:

- the possession of nuclear material (subsection 23(2));
- a breach of duty to ensure security of associated technology (subsection 25A(3));
- unauthorised communication of information (subsection 26(5));
- communication prejudicing security of nuclear material or associated item (subsection 26(5));
- the making of false or misleading statements in relation to the Act (subsection 30(3)); and
- unauthorised access to areas to which access is permitted under permit (subsection 31A(4)).

3.6 The Bill also amends section 8 of the *Comprehensive Nuclear Test-Ban Treaty Act 1998* and sections 5(1) and 12 of the *Chemical Weapons (Prohibition) Act 1994* to extend geographical jurisdiction based on Section 15.2 of the Criminal Code.

Permit to decommission a facility

3.7 The bill inserts a new section 16B into the *Nuclear Non-Proliferation (Safeguards) Act 1987* to allow the Minister to grant a written permit to decommission the whole or part of a nuclear facility. Under this subsection, the Bill requires that the permit to decommission a facility must be approved by the Director of Safeguards (as per subsection 12(2) of the Act). The Director must also be satisfied that appropriate safeguards could be applied during the decommissioning and that adequate physical security could be applied to nuclear material during the decommissioning.⁵ The bill also inserts a new section 29A that makes it an offence for a person to decommission the whole or part of a facility without holding a permit.

Bringing Australia's legislation into line with the Physical Protection Convention

3.8 The Explanatory Memorandum (EM) makes clear that a key purpose of these amendments is to ensure consistency of Australian legislation with the amended Physical Protection Convention (see chapter 2). The bill's amendments relate to the substance, the terminology and the timing of Convention's amendments. The EM notes that:

- the new section 34A relating to offences carrying, sending or moving nuclear material 'is inserted only to ensure consistency of Australian legislation with the language of the amended Convention';

4 *Explanatory Memorandum*, p. 6.

5 See paragraphs 16B(1)(b) and 16B(1)(c)

- the bill's amendment to section 36 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* to punish threats to use nuclear material to cause damage 'to the environment' is '[c]onsistent with the requirements of the amended Physical Protection Convention';⁶
- the bill repeals the Act's definition of 'nuclear facility' in section 32 to be replaced by 'an express definition using the words of the amended Convention'.⁷ The new section replaces the term 'nuclear material' with the term 'nuclear facility' and provides a definition of what constitutes a nuclear facility.

Summary

3.9 If passed, the effect of the Non-Proliferation Legislation Amendment Bill 2006 will be threefold. First, it will introduce three new offences under the Safeguards Act relating to decommissioning a nuclear facility without a permit, trafficking nuclear material and interfering with the operation of a nuclear facility. Second, the bill increases various imprisonment penalties for offences under the Act. Third, the bill also extends the geographical scope of jurisdiction for various offences which will mean that Australian citizens residing overseas will be imprisoned if found guilty of these offences. These amendments strengthen Australia's regime for domestic security in the use, storage and transport of nuclear material and assist in multilateral efforts to this end.

6 *Explanatory Memorandum*, p. 8.

7 *Explanatory Memorandum*, p. 7.