

1986

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

NUCLEAR NON-PROLIFERATION (SAFEGUARDS) BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Resources and Energy,
Senator the Hon Gareth Evans, Q.C.)

OUTLINE

The Bill gives effect to Australia's international non-proliferation obligations requiring domestic legislation. These obligations arise under the Nuclear Non-Proliferation Treaty, Australia's safeguards agreement with the International Atomic Energy Agency, Australia's bilateral nuclear safeguards agreements with other countries and Euratom, and the Physical Protection Convention (not yet ratified). The Bill also provides the legislative basis for the operation of the Australian Safeguards Office in administering Australia's safeguards system.

The Bill establishes a system of permits for the possession and transport of nuclear material and other nuclear items such as equipment, information and material used in nuclear reactors. The permits will be issued by the Minister who will have power to impose conditions governing all aspects of the possession of nuclear material and items.

Substantial penalties are provided for possessing or transporting nuclear material or associated items without a permit. The Bill also establishes a number of offences related to the criminal use of nuclear material such as stealing nuclear material, threatening to use nuclear material and so on. Australia is required to establish these offences to comply with the Physical Protection Convention. Enactment of this legislation, together with other relevant legislation, will put Australia in a position to comply with the Convention when it is ratified.

The system of permits and accounting for nuclear material will be administered by the Australian Safeguards Office. The Director of Safeguards is established as a statutory officer but the staff of the Director is to be employed under the provisions of the Public Service Act 1922.

The Bill will enable the Minister to appoint inspectors who will have powers of inspection set out in the Bill. The Minister will also have power to declare inspectors of the International Atomic Energy Agency to be "Agency inspectors" under the legislation. Australia is under an international obligation to allow inspectors of the Agency to inspect nuclear material in Australia and this Bill is designed to give their inspections statutory authority.

The Bill provides that the powers and functions under the legislation are to be exercised in accordance with the international agreements that the Bill implements.

FINANCIAL IMPACT

The Bill gives statutory recognition to the existing Australian Safeguards Office which already carries out the nuclear safeguarding functions provided for in the Bill. Therefore there is not expected to be any financial impact from enactment of this legislation.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 Short Title

The short title of the legislation is Nuclear Non-Proliferation (Safeguards) Act 1986.

Clause 2 Commencement

The substantive provisions of the legislation will come into effect on a day or days fixed by Proclamation.

Clause 3 Objects of the Act

The objects of the Act are to give effect to certain of Australia's international obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards, the Convention on the Physical Protection of Nuclear Material and Australia's bilateral nuclear safeguards agreements. It should be noted that the Physical Protection Convention has not yet been ratified by Australia. It is intended that the ratification of the Convention and the bringing into effect of provisions in this legislation giving effect to the Convention should be done contemporaneously.

Clause 4 Interpretation

Words and phrases used in the legislation are defined in this clause. The following significant definitions should be noted.

"associated equipment" is defined as equipment that is specially applicable to nuclear activities or the production of nuclear weapons and is declared by the Minister to be associated equipment for the purposes of this definition. Associated equipment would include specialised equipment used in the operation of a nuclear reactor, enrichment of uranium, reprocessing of spent reactor fuel or other activities that form part of the nuclear fuel cycle.

"associated item" is a term used to collectively refer to associated material, associated equipment or associated technology.

"associated material" is defined as material, other than nuclear material, that is specially applicable to the construction or operation of nuclear reactors and is declared by the Minister to be associated material for the purposes of this definition. Associated material would include heavy water and reactor grade graphite.

"nuclear material" is defined to have the same meaning as in the Agreement between Australia and the International Atomic Energy Agency. Under this definition nuclear material includes plutonium 239, uranium 233 and 235, natural, enriched and depleted uranium, thorium, mixtures and alloys of these elements and other materials as the Board of Governors of the Agency determines, but does not include ores or ore residues. Determinations by the Board have to be accepted by Australia and prescribed by regulations to become effective for the purposes of this definition.

"associated technology" means a document containing information that is primarily applicable to enrichment of nuclear material, reprocessing of irradiated nuclear material, production of heavy water or nuclear weapons, or nuclear information that is covered by an international agreement and is declared by the Minister to be information for the purposes of this definition. A document is defined to include a photograph, model or other thing from which the information may be obtained. Information publicly available is excluded from the definition.

Clause 5

Conduct by directors, servants or agents

Where it is necessary to establish the state of mind of a body corporate for the purposes of this legislation, the state of mind or conduct of a director, servant or agent of a body corporate shall be deemed to be the state of mind or conduct of the body corporate, provided the director, servant or agent acts within his/her authority. Similarly a person shall be attributed with the state of mind or conduct of his/her servant or agent.

Clause 6

Act to extend to external Territories

The legislation will extend to every external Territory of Australia.

Clause 7

Act to bind Crown

The legislation will bind the Crown in the right of the Commonwealth, the States, the Northern Territory and Norfolk Island, but the Crown will not be liable to be prosecuted for an offence.

Clause 8
Application of Act

This clause sets out the constitutional basis for the legislation. The constitutional powers on which the legislation is based relate to external affairs, foreign and trading corporations, Territories, trade and commerce with other countries and among the States, Commonwealth authorities and instrumentalities and posts and telegraphs.

PART II - CONTROL OF NUCLEAR MATERIAL AND ASSOCIATED ITEMS

Clause 9
Nuclear material to which this Part applies

This Part applies to all nuclear material except material exempted by declarations of exemption or termination under clause 11 or by regulations.

Clause 10
Associated items to which this Part applies

This Part applies to all associated items except items exempted by a declaration under clause 11 or by regulations.

Clause 11
Exemption and termination declarations

The Minister may exempt from the application of Part II of the Bill nuclear material which has been exempted by the Agency because it is used in quantities below certain prescribed quantities set out in the Agency Agreement.

The Minister may also terminate the application of Part II of the Bill to nuclear material where the Agency has determined that safeguards should be terminated because

- . nuclear material has been consumed, diluted or has become practically irrecoverable
- . nuclear material has been transferred out of Australia, or
- . nuclear material is used in non-nuclear activities such as the production of alloys or ceramics.

The Minister may exempt an associated item if it is transferred out of Australia in circumstances which are not inconsistent with Australia's bilateral agreements.

Declarations by the Minister may be varied or revoked. An exemption declaration shall be revoked if nuclear material is processed or stored with non-exempt nuclear material or is returned to nuclear use.

Declarations by the Minister shall be notified in the Gazette and shall be tabled in Parliament for parliamentary scrutiny and possible disallowance. The notification, tabling and disallowance provisions are set out in sub-clauses (10) to (13).

Clause 12

Application for permit

A person may apply to the Director in accordance with an approved form for the grant by the Minister of a permit to possess nuclear material or associated items or a special transport permit. The Director may require additional information from the applicant. The application is required to be submitted by the Director to the Minister together with a report by the Director in relation to the application. The report shall include particulars of any failure to supply information requested by the Director.

Clause 13

Permit to possess nuclear material or associated items

The Minister may grant a permit to possess nuclear material or an associated item subject to such conditions as are determined by the Minister and specified in the permit. The permit may include conditions in respect of:

- . material or items to which the permit applies,
- . period of the permit,
- . location and procedures for transport of the material or item,
- . physical security,
- . persons who may have access to the material or item,
- . records to be kept,
- . uses of the material or item,
- . reports and inspections, including inspections by Agency inspectors,
- . transfer, alteration, dispersal or disposal of the material or item,
- . communication of sensitive information,
- . provision of information in respect of nuclear facilities.

A condition may specify that the approval of a specified person (eg the Director) is required before a particular act or thing may be done.

The permit shall include a statement that the conditions in the permit may be reviewed by the Administrative Appeals Tribunal.

The Minister may vary a permit and the variation will take effect on the day on which notice of the variation is given to the holder of a permit or a later day specified in the notice.

Clause 14

Permit not to be granted to owner or operator of nuclear facility unless Director satisfied as to certain matters

The Minister shall not grant a permit to an operator of a nuclear facility until the Director is satisfied, and has informed the Minister, that information requested by the Director has been supplied to the Director and that safeguards verification procedures and adequate physical security can be applied at the facility.

Clause 15

Permit not to be granted where nuclear material, etc, to be held outside nuclear facility unless Director satisfied as to certain matters

Where the nuclear material or item is to be held outside a nuclear facility the Minister shall not grant a permit until the Director is provided with all the information required under the Act.

Clause 16

Special transport permit

The Minister may grant a permit to transport nuclear material or an associated item subject to such conditions as are determined by the Minister and specified in the permit. The permit may include conditions in respect of:

- . period of the permit,
- . means and route of transport,
- . physical security,
- . records to be kept,
- . reports to be furnished.

A condition may specify that the approval of a specified person (eg the Director) is required before a particular act or thing may be done.

The permit shall include a statement that the conditions in the permit may be reviewed by the Administrative Appeals Tribunal.

The Minister may vary a permit.

Clause 17

Application for authority to communicate information

A person may apply to the Director in accordance with an approved form for the grant by the Minister of an authority to communicate information concerning enrichment or reprocessing of nuclear material or production of heavy water or nuclear weapons. The Director may require additional details from the applicant. The application is required to be submitted by the Director to the Minister together with a report by the Director in relation to the application.

Clause 18Authority to communicate information

The Minister may grant an authority to communicate the information mentioned in clause 17 subject to conditions specified in the authority, including the period of the authority, the kind of information that may be communicated and persons to whom it may be communicated. The authority shall include a statement that the conditions in the authority may be reviewed by the Administrative Appeals Tribunal. The Minister may vary the authority.

Clause 19Revocation of permit or authority

A permit or an authority may be revoked by the Minister in the event of conviction for an offence against this legislation, or for contravention of a condition, or a direction or order by the Minister under clause 73, and shall be revoked at the request of the holder of the permit or authority. The permit or authority may be revoked whether the contravention takes place within or outside Australia.

Clause 20Notification of grant, variation or revocation of permit or authority

The Minister is required to publish a notice in the Gazette of the grant, variation or revocation of a permit or an authority. The notice shall contain such particulars as are prescribed by regulations or as determined by the Minister if there are no regulations. Failure to publish a notice will not invalidate the grant, variation or revocation of a permit or authority.

Clause 21Effect of grant of permit or authority

A permit or an authority does not make it lawful to do anything that is unlawful under other laws of the Commonwealth, State or Territory.

Clause 22Review of decisions

Decisions made by the Minister or the Director under the legislation shall be reviewable by the Administrative Appeals Tribunal. The Minister or the Director are required to notify the applicant for or the holder of a permit or an authority within 30 days of making a decision. The notice must set out the grounds for the decision and include a statement that application may be made to the Administrative Appeals Tribunal for a review of the decision. A person whose interests are affected by the decision may then apply to the Tribunal for a review of the decision.

Provision is made in sub-clause (5) for the Minister to remove a decision from the jurisdiction of the Administrative Appeals Tribunal by issuing a certificate stating that in the Minister's opinion it is in the public interest that a decision should not be reviewable on the grounds stated in the certificate. A copy of a certificate issued by the Minister is required to be laid before each House of Parliament.

PART III - OFFENCES

Division 1 - General offences

Clause 23

Possession of nuclear material or associated item without permit

Possession of nuclear material or an associated item without a permit to possess or a transport permit is prohibited. Penalty provided is up to \$10 000 or imprisonment for 5 years, or both, for a natural person, or \$50 000 for a body corporate.

The prohibition extends outside Australia to an Australian ship or aircraft or to a journey into or out of Australia. Possession by a Commonwealth officer or a prescribed Commonwealth authority in the course of collecting information on nuclear activities and disarmament for the Government and in the course of advising the Government, and by the Director or an inspector in the course of duty, is exempted.

Clause 24

Special provision for carriers

A carrier, possessing nuclear material or an associated item purely for the purpose of transport, is not guilty of an offence unless it is proved that he knew that it was nuclear material or an associated item. Also, a carrier is not required to have a permit for carrying material or item prescribed by regulations.

Clause 25

Breach of condition of permit or authority etc

Breach of a condition of permit or authority or non-compliance with a direction or order by the Minister is an offence. Penalty: up to \$5 000 and/or 2 years, or \$25 000 for a body corporate.

The provision extends to a contravention outside Australia.

Clause 26

Unauthorised communication of information

It is prohibited to communicate information concerning enrichment or reprocessing of nuclear material, or production of heavy water or nuclear weapons without authority. Penalty: up to \$5 000 and/or 2 years, or \$25 000 for a body corporate.

The prohibition does not apply to a Commonwealth officer, or to a prescribed authority where the communication is in the course of collecting information on nuclear activities and disarmament for the Government or in the course of advising the Government. Communication by the Director or an inspector in the course of duty is also exempted.

Clause 27

Minister to be given certain notices in respect of exempt nuclear material

Where nuclear material has been exempted from the operation of this Act by a declaration by the Minister, it is prohibited to process or store that material with non-exempt material or to use it in nuclear activities without giving prior notice to the Minister. Penalty: up to \$5 000 and/or 2 years, or \$25 000 for a body corporate.

Clause 28

Interference with containment or surveillance devices

It is prohibited to interfere with containment devices being used for safeguarding nuclear material or associated items or with surveillance devices being used for safeguards verification purposes. Penalty: up to \$5 000 and/or 2 years, or \$25 000 for a body corporate.

Clause 29

Information in relation to design for construction or modification of nuclear facility

It is prohibited to commence construction or significant modification of a nuclear facility before notifying the Director and providing such information as the Director requests. Significant modification means modification which affects the accounting and control of the nuclear material or associated items at the facility. Time limits may be prescribed by regulations. The Bill does not intend to control the construction of nuclear facilities: the provision is designed to ensure that the Director gets the necessary information to plan proper safeguards for a facility. Penalty: up to \$5 000 and/or 2 years, or \$25 000 for a body corporate.

Clause 30

False or misleading statements etc

False or misleading statements are not to be made or fake or misleading documents are not to be supplied to the Minister, the Director, an inspector or an Agency inspector while they are carrying out their duties. Penalty: up to \$5 000 and/or 2 years, or \$25 000 for a body corporate.

Clause 31

Obstruction of Agency inspector

The hindering or obstructing of an Agency inspector in the performance of a duty is an offence. Penalty: up to \$1 000 and/or 6 months or \$5 000 for a body corporate. (This provision applies only to Agency inspectors, because the obstruction of an inspector, who is a Commonwealth official, is covered by the Crimes Act 1914).

Division 2 - Offences relating to the Physical Protection Convention

Clause 32

Interpretation

"Nuclear material" is defined to have the same meaning as in the Physical Protection Convention. This is necessary because the definition in the Physical Protection Convention is slightly different from the definition in the Agency Agreement.

Clause 33

Stealing, etc, nuclear material

It is prohibited to steal, fraudulently misappropriate or convert to one's own use, or to obtain by false pretences nuclear material. Penalty: \$20 000 and/or 10 years.

Clause 34

Demanding nuclear material by threats, etc

It is an offence to demand nuclear material by force or by a threat. Penalty: \$20 000 and/or 10 years.

Clause 35

Use of nuclear material causing injury to persons or damage to property

It is an offence to use nuclear material to cause serious injury to persons or substantial damage to property. Penalty: \$20 000 and/or 10 years.

Clause 36

Threat to use nuclear material

It is an offence to threaten to use nuclear material to cause death or injury to a person or damage to property. Penalty: \$20 000 and/or 10 years.

Clause 37

Threat to commit offence

It is an offence to threaten to commit an offence under clause 33 in order to compel a person to do or refrain from doing something. Penalty: \$20 000 and/or 10 years.

Clause 38

Extension of application of offence provisions

The provisions of the last five clauses extend outside Australia where the offence is committed on an Australian ship or aircraft, in the course of transport of nuclear material into or out of Australia or by an Australian citizen. A person may also be prosecuted in Australia where an offence against these provisions was committed in a country which is a party to the Physical Protection Convention and the alleged offender is in Australia and has not been extradited to the other country.

Division 3 - Miscellaneous

Clause 39

Forfeiture

A court may order forfeiture of an article used in the commission of an offence under this Bill. The Minister may order the disposal of a forfeited article.

Clause 40

Hearing in camera, etc

A court may order that, in order to prevent the disclosure of information concerning enrichment or reprocessing of nuclear material, or production of heavy water or nuclear weapons, proceedings for an offence under this Bill should not be open to the public, a record of proceedings should not be published or documents should not be open to general access. Failure to comply with such order is an offence. Penalty: up to \$10 000 and/or 5 years, or \$50 000 for a body corporate.

Any documents containing such information that would otherwise form a record of court proceedings shall be delivered to the Director after the termination of the proceedings.

Clause 41

Register of Permit and Authority Holders to be evidence of certain matters

The Register established under clause 69 or a certified copy of the Register is prima facie evidence that a person is or is not a permit or authority holder where it appears from the Register that such person holds or does not hold a permit or an authority. A document certified by the Director to be a true copy of the Register is prima facie evidence that it is such a copy.

PART IV - ADMINISTRATION

Division 1 - Director of Safeguards

Clause 42
Director of Safeguards

A Director of Safeguards shall be appointed by the Governor-General for a maximum term of 5 years on terms and conditions determined by the Governor-General. A person over 65 shall not be eligible for appointment or to continue in the office.

Clause 43
Functions of Director

The functions of the Director are to administer Australia's safeguards system, to carry out Australia's international reporting obligations in respect of the safeguards system, to monitor compliance by Australia's treaty partners with the provisions of prescribed international agreements, to undertake, coordinate and facilitate research and development in relation to safeguards and to advise the Minister on the operation of the Australian safeguards system. Additional functions may be given to the Director by regulations.

Clause 44
Directions of Minister

The Director shall comply with directions of the Minister.

Clause 45
Remuneration and allowances

The Director shall be paid the remuneration determined by the Remuneration Tribunal and allowances as prescribed.

Clause 46
Leave of absence

The Minister may grant leave of absence to the Director.

Clause 47
Resignation

The Director may resign.

Clause 48

Termination of appointment

The Governor-General may terminate the appointment of the Director for misbehaviour or physical or mental incapacity. The appointment shall be terminated if the Director becomes bankrupt, is absent from duty for the period specified without the Minister's approval, engages in paid employment without approval or fails to disclose to the Minister any business interests.

Clause 49

Disclosure of interests

The Director is required to disclose any business interests to the Minister.

Clause 50

Acting Director

An acting Director may be appointed by the Minister for a maximum of 12 months if the position of the Director is vacant or the Director is absent or unable to perform his or her duties. The circumstances of the appointment may be specified in the instrument of appointment. If the position becomes vacant during such an appointment the acting Director may continue to act until the Minister otherwise directs, the vacancy is filled or 12 months elapse.

The acting Director has all the powers and functions of the Director. The validity of any acts by the acting Director shall not be affected by any irregularity in relation to his or her appointment.

The Minister may determine the terms and conditions, including remuneration, of appointment of an acting Director and may terminate the appointment at any time. An acting Director may resign the appointment.

Clause 51

Annual report by Director

The Director is required to furnish an annual report to the Minister to be laid before each House of the Parliament.

Clause 52

Additional reports

The Minister may require additional reports from the Director. The Director may furnish such other reports as the Director sees fit.

Clause 53
Delegation by Director

The Director may delegate all or any of his or her powers, except the power of delegation, to an inspector or a member of his or her staff.

Division 2 - Australian Safeguards Office

Clause 54
Australian Safeguards Office

The legislation establishes the Australian Safeguards Office consisting of the Director and staff referred to in clause 55.

Clause 55
Staff

The staff of the Australian Safeguards Office shall be persons employed under the Public Service Act 1922.

Clause 56
Engagements of consultants, etc

The Director may engage consultants with the approval of the Minister. Terms and conditions of an engagement are to be determined by the Director.

Division 3 - Inspectors or Agency Inspectors.

Clause 57
Inspectors and Agency inspectors

The Minister may appoint inspectors and determine the terms and conditions of such appointments. The Minister may also terminate such appointments. Where a person has been designated by the Agency to be an Agency inspector for Australia the Minister is required to declare that person to be an Agency inspector.

Clause 58
Identity Cards

The Director may issue to an inspector an identity card which must be surrendered when the person ceases to be an inspector. A fine of up to \$100 is provided for failure to return an identity card.

Division 4 - Inspections, searches and seizures

Clause 59Safeguards inspections by inspectors

An inspector may exercise his/her powers for the purposes of ascertaining compliance with the legislation, conditions of permits and orders and directions by the Minister, ensuring the proper functioning of devices installed for the containment or surveillance of nuclear material or associated items, facilitating inspections by Agency inspectors and ascertaining whether a nuclear facility is being constructed or modified in accordance with information provided to the Director. The powers of inspectors include powers of search, inspection and examination, taking of samples, examination of documents, measurement of quantity of nuclear material, and the verification, calibration, operation and installation of containment and surveillance devices.

An inspector has the right of entry to premises with the consent of the occupier, in accordance with an agreement between the Director and the occupier or pursuant to a warrant. Similarly an inspector may enter, and stop and detain, a vessel, aircraft or vehicle with the consent of the person in control or pursuant to a warrant.

A warrant may be issued by a Magistrate upon information on oath if the Magistrate considers that there are reasonable grounds for issuing the warrant. The warrant shall contain a statement of the purpose of the warrant, the time during which entry is authorised and the duration of the warrant.

Clause 60Safeguards inspections by Agency inspectors

Agency inspectors have powers of entry and inspection for the purposes of carrying out inspections in accordance with the Agency Agreement. Their powers include powers to inspect, take samples, examine documents, measure nuclear material and to install, operate, calibrate and verify containment and surveillance devices. They may enter premises and land with the consent of the occupier or in accordance with an agreement between the Director and the occupier. Also a national inspector may take out a warrant to effect entry to facilitate an inspection by an Agency inspector, and an Agency inspector may then accompany the national inspector to carry out an inspection.

Clause 61Offence - related searches and seizures

Where an inspector believes on reasonable grounds that there may be an article on any premises, vessel, aircraft or vehicle which may afford evidence of an offence under the legislation the inspector may enter and search for, and seize any such

article. Entry may be carried out with the consent of the occupier or person in control, upon warrant, or without warrant if the emergency circumstances of clause 63 exist. If necessary a vessel, aircraft or vehicle may be stopped and detained.

A warrant may be issued by a Magistrate upon information on oath if the Magistrate considers that there are reasonable grounds for issuing the warrant. The warrant shall state the purpose of the warrant, the time during which entry is authorised, a description of the article to be seized and the duration of the warrant.

A seized article may be retained for 60 days or, if court proceedings are instituted within this time, until those proceedings are terminated. The Director may authorise the return of the seized article unconditionally or upon such conditions as the Director thinks fit.

Clause 62

Warrants may be granted by telephone

In circumstances of urgency an inspector may obtain a warrant from a Magistrate by telephone.

The procedure is that the inspector prepares an information and communicates it to the Magistrate by telephone. The Magistrate completes and signs a warrant if he/she is satisfied that there are reasonable grounds for it. The terms of the warrant are then communicated to the inspector who completes a form of warrant accordingly.

The form of warrant and the information on which the warrant was based must be forwarded to the Magistrate no later than the day following the expiry of the warrant. The Magistrate must attach these documents to the warrant which he/she signed earlier.

The form of warrant completed by an inspector is a valid warrant if it is in accordance with the warrant signed by the Magistrate.

The warrant signed by the Magistrate must be produced in court to prove that any entry, search or seizure was done in accordance with the warrant.

Clause 63

Emergency searches and seizures

In an emergency an inspector may enter, search and seize an article without warrant. An emergency means circumstances of such seriousness and urgency as to require and justify immediate action. The inspector must believe on reasonable grounds that an article exists which will afford evidence of an offence and that action is necessary to prevent its concealment, loss or destruction.

The inspector may retain the article for 60 days or, if court proceedings are instituted, until the proceedings are terminated. The Director may authorise the return of the article either unconditionally or subject to conditions.

Clause 64

Inspectors and Agency inspectors to produce evidence of identity

An inspector must produce his identity card to a person in charge of land premises, vessel, aircraft or vehicle in order to exercise his powers. An Agency inspector must produce a copy of the declaration by the Minister declaring the person to be an Agency inspector for the purposes of this Act to the person in charge of the land or the premises in order to exercise his/her powers.

Clause 65

Persons to assist inspectors

An occupier of premises or person in control of a vehicle, aircraft or vessel must provide reasonable assistance to an inspector if requested to do so. However a person is not required to comply with the request if the inspector fails to produce his/her identity card. Penalty: \$1,000 and/or imprisonment for six months.

Clause 66

Inspector may require information, etc

A person committing or suspected of committing an offence must state his/her name and address to an inspector if requested to do so. A person doing an act requiring a permit or authority must produce such a permit or authority to an inspector. Penalty: up to \$1000.

Clause 67

Seizure of nuclear material, etc, where required by prescribed international agreement

Where in accordance with an international agreement Australia is under an obligation to return or transfer nuclear material or an associated item to another country, the Director may seize the material or item and arrange for it to be dealt with in accordance with the agreement.

Within 7 days of seizure of the material or item the Director shall give notice to the person from whom it was seized. The notice shall state the grounds of the seizure, inform the person that he/she may apply to the Minister within 14 days for the return of the material or item and summarise the applicable procedures. If no notice is given the person has a right to have the material or item returned. If no application for the return of the material or item is made within 14 days or application is made but the Minister rejects it, the Minister

may authorise the return or transfer of the material or item to the relevant country. Compensation on just terms is payable to the person from whom the material or item was seized.

Division 5 - Miscellaneous

Clause 68

Compliance with conditions, etc

Where a person does not comply with a restriction, condition, order or direction the Director may do, or authorise an inspector to do, whatever is necessary to effect such compliance. Costs incurred by the Director are recoverable from the relevant person.

Clause 69

Register of Permit and Authority Holders to be kept

The Director is required to keep a "Register of Permit and Authority Holders" in a form as directed by the Minister. The Register is required to have listed in it the name of the person to whom a permit or authority is granted, the date of the grant and the particulars of the revocation, expiration or cessation of a permit or authority.

PART V - MISCELLANEOUS

Clause 70

Powers to be exercised in accordance with international agreements

The Minister, the Director, inspectors and other persons shall exercise their powers, directions, duties or functions under the legislation consistently with Australia's international obligations under the Non-Proliferation Treaty, the Agency Agreement, the Physical Protection Convention and the prescribed international agreements. Persons exercising powers or discretions under this legislation are required to have regard to Australia's obligations under these international agreements in exercising those powers or discretions.

Clause 71

Reports, etc, to be confidential

Any documents or information provided to the Director or an inspector pursuant to a condition of a permit, an order or direction shall be kept confidential. Also documents and information provided under an international agreement under which they are to be treated as confidential or by a foreign government on the understanding that it is to be confidential, shall be kept confidential. The Director, an inspector, member of staff or a consultant shall not divulge such a document or information. Penalty: \$5,000 and/or imprisonment for 2 years.

Clause 72

Delegation by Minister

The Minister may delegate his powers to the Director or an officer of the Department.

Clause 73

Orders and directions

The Minister may make orders and issue directions, consistent with this Act and the regulations, to permit or authority holders. If an order and a direction are inconsistent the direction shall prevail.

Sub-clauses (4), (5) and (6) provide for the gazettal, tabling, disallowance and publication of orders.

A direction shall include a statement that it may be reviewed by the Administrative Appeals Tribunal.

Directions shall be deemed to be given to the holder of a permit if a notice of the direction is served personally or by post, telegram or telex on the holder of a permit.

Clause 74

Regulations

Regulations made by the by the Governor-General generally for the administration of the Act and more specifically with respect to forms of reports, security standards, accounting and operating records and systems of measurements. A penalty not exceeding a fine of \$1,000 may be imposed for offences against the regulations.

