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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOUTH PACIFIC NUCLEAR FREE ZONE TREATY BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs,
the Hon. Bill Hayden, M.P.)

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OUTLINE

The Bill gives domestic legislative effect to certain of Australia's obligations under the South Pacific Nuclear Free Zone Treaty (also known as the Treaty of Rarotonga). This Bill is supplemented by the proposed amendments to the Environment Protection (Sea Dumping) Act 1981 relating to the dumping of radioactive waste, and the provisions of the Nuclear Non-Proliferation (Safeguards) Bill 1986, relating to the application of safeguards to nuclear material, which cover Treaty obligations referred to but not provided for in this Bill.

The Bill establishes offences relating to the manufacture, production and acquisition of nuclear weapons; research and development relating to the manufacture or production of nuclear weapons; the possession or control of a nuclear weapon; the stationing of nuclear weapons in Australia; and the testing of nuclear weapons. It also makes it an offence to do any act which facilitates the manufacture, production, acquisition or testing of nuclear weapons. The Bill extends these provisions beyond Australian territory in certain circumstances, and provides appropriately severe penalties for the offences.

The Bill also establishes the legislative framework for inspections in Australia by Treaty inspectors as required by the Treaty, and provides for the appointment by the Minister for Foreign Affairs of authorised officers to accompany and assist international inspectors while they are in Australia. Inspectors from the Australian Safeguards Office (ASO) are provided with powers to assist Treaty inspectors and authorised officers in carrying out Treaty inspections. In addition, inspectors from the ASO are given powers to investigate suspected breaches of the Act.

FINANCIAL IMPACT

The legislation is not expected to have any financial impact. The Australian Safeguards Office, which is already established, is competent to carry out the additional functions conferred upon it under the Bill.

NOTES ON CLAUSESPART I - PRELIMINARYClause 1: Short Title

The short title of the legislation is the South Pacific Nuclear Free Zone Act 1986.

Clause 2: Commencement

The legislation will come into effect on a date or dates to be fixed by Proclamation, except for Part I of the Bill which comes into effect on the date of Royal Assent.

Clause 3: Principal Object of Act

The principal object of the Act is to give effect to certain obligations Australia will have as a party to the Treaty of Rarotonga. The legislation will clear the way for Australia's ratification of the Treaty.

Clause 4: Interpretation

This clause defines significant expressions used in the Bill. The following definitions are particularly significant:

"authorised officer" is a person appointed by the Minister to accompany a visiting Treaty inspector while the latter is in Australia for the purposes of an inspection under Annex 4 of the Treaty.

"nuclear explosive device" has the same meaning as it has in the Treaty, i.e. any nuclear weapon or other explosive device capable of releasing nuclear energy irrespective of the purpose for which it could be used. (This would include devices used for so-called peaceful nuclear explosions.) The term includes such a weapon or device in unassembled and partly assembled forms (i.e. it includes the components of such devices as well as the assembled device), but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it.

"inspector" is a person appointed as an inspector under sub-section 57(1) of the Nuclear Non-Proliferation (Safeguards) Act 1986, on the staff of the Australian Safeguards Office.

"stationing" has the same meaning as it has in the Treaty, i.e. emplantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment. It does not include visits by foreign ships or aircraft.

"Treaty inspector" is a person appointed as an inspector under Annex 4 of the Treaty and who is declared by the Minister to be a Treaty inspector for the purposes of the Act.

Clause 5: Conduct by directors, servants or agents

Where it is necessary to establish the state of mind of a corporation, the state of mind or conduct of a director, servant or agent of the corporation shall be deemed to be the state of mind or conduct of the corporation, 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.

PART II - PROHIBITIONS IN RELATION TO NUCLEAR EXPLOSIVE DEVICES

Clause 8: Manufacture, production and acquisition of nuclear explosive devices prohibited

This clause makes it an offence to undertake or engage in the manufacture or production of a nuclear explosive device or to acquire such a device. It gives effect to the obligations Australia has under Article 3 of the Treaty not to manufacture, produce or acquire nuclear explosive devices.

Clause 9: Research and development relating to manufacture or production of nuclear explosive devices prohibited

This clause makes it an offence to undertake or engage in research or development for the purpose of, or directed towards, the manufacture or production of a nuclear explosive device. This also relates to the obligations not to manufacture, produce or acquire nuclear explosive devices.

Clause 10: Possession of, or control over, nuclear explosive devices prohibited

This clause makes it an offence to possess or have control over a nuclear explosive device. It gives effect to the obligation under Article 3 of the Treaty prohibiting possession or control of nuclear explosive devices.

Clause 11: Stationing of nuclear devices in Australia prohibited

This clause makes it an offence to station nuclear devices in Australia, or to do any act or thing to facilitate such stationing. The clause gives effect to Australia's obligations under Article 5 of the Treaty.

Clause 12: Testing of nuclear explosive devices prohibited

This clause makes it an offence to undertake or carry out a test of a nuclear explosive device. It gives effect to Australia's obligations under Article 6 of the Treaty to prevent the testing of nuclear explosive devices in its territory.

Clause 13: Facilitation of manufacture, production, acquisition or testing of nuclear explosive devices prohibited

This clause makes it an offence to do any act or thing to facilitate the manufacture, production, acquisition or testing of a nuclear explosive device anywhere in the world by any person (including a foreign country). It gives effect to Australia's obligations under Articles 3 and 6 of the Treaty not to assist or encourage the manufacture, production, acquisition or testing of any nuclear explosive device by any state.

Clause 14: Extension of application of offence provisions

This clause extends the operation of clauses 8, 9, 10, 12 and 13 of the Bill to acts done outside Australia by the Commonwealth, a State or a Territory, or by an authority of them, or acts done outside Australia on an Australian ship or Australian aircraft.

Clause 15: Visits of foreign ships and aircraft etc.

The presence of nuclear explosive devices on foreign ships visiting Australian ports or navigating in or through Australian waters or on foreign aircraft visiting Australian airfields, does not constitute stationing (which is prohibited under clause 11) and cannot give rise to breaches of the Bill's provisions on possession, control, acquisition and stationing or the facilitation thereof. Dry docking is a form of visit. This clause is in conformity with the definition of stationing and with Article 5(2) of the Treaty, which expressly reserves to Treaty parties the right to allow such visits, navigation and transit. The qualification to clause 10 is intended to ensure that certain forms of "control" of a nuclear explosive device are not prohibited - control by way of the transmission of instructions to a foreign force outside Australia, e.g. by a visiting U.S. President or CINCPAC Admiral, or control by way of interception of such transmission by an Australian stationed at the North West Cape Joint Facility.

Clause 16: Penalties for offences

The Act establishes severe penalties for persons convicted of offences under Part II: imprisonment for up to 20 years and a fine of up to \$100,000 for individuals, and a fine of up to \$500,000 for corporations.

PART III - SAFEGUARDS IN RELATION TO NUCLEAR MATERIAL AND PREVENTION OF DUMPING AT SEA OF RADIOACTIVE WASTES AND OTHER RADIOACTIVE MATTER

Clause 17: Non-proliferation safeguards in relation to nuclear material

This clause draws attention to the role played by the Nuclear Non-Proliferation (Safeguards) Act in giving effect to Australia's undertakings under Articles 4, 8 and Annex 2 of the Treaty.

Clause 18: Prevention of dumping at sea of radioactive wastes and other radioactive matter

This clause draws attention to the role played by the Environment Protection (Sea Dumping) Act 1981 in giving effect to the prohibitions on the dumping of radioactive waste contained in Article 7 of the Treaty.

PART IV - INSPECTIONS

DIVISION 1 - TREATY INSPECTORS AND AUTHORISED OFFICERS

Clause 19: Treaty inspectors and authorised officers

If the Minister is satisfied that a person has been properly appointed as a special inspector under Annex 4 of the Treaty, he shall declare that that person is a Treaty inspector for the purposes of the Act, and shall provide the Treaty inspector with a copy of that declaration.

The Minister may also appoint in writing a person to be an authorised officer for the purposes of the Act, may determine the terms and conditions of that appointment, and may terminate the appointment at any time. This provision is to give effect to Australia's entitlement under the Treaty to have a representative accompany Treaty inspectors in Australia.

Clause 20: Identity cards

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

DIVISION 2 - INSPECTIONS AND SEARCHES

Clause 21: Facilitation by inspectors of Treaty inspections

Inspectors appointed under the Nuclear Non-Proliferation (Safeguards) Act 1986 (defined as inspectors under Clause 4 of the Bill) are authorised to exercise certain powers for the purpose of facilitating inspections by Treaty inspectors (see clause 22 below). The inspectors' powers include powers of search, inspection and examination, taking of samples, taking of extracts from and copies of documents, and such other powers as are necessary to facilitate such inspections.

An inspector has the right of entry onto land or premises with the consent of 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 state the time during which entry is authorised and the duration of the warrant.

Clause 22: Treaty inspections by Treaty inspectors

Treaty inspectors have powers of entry and inspection for the purposes of carrying out an inspection in accordance with Annex 4 of the Treaty and the directives of the Consultative Committee established under Annex 3. Their powers include powers to inspect, examine, take samples, take extracts from or copy documents and such other powers as are necessary or appropriate to carry out a Treaty inspection. They may enter premises or land with the consent of the occupier or under warrant in the company of an inspector, and may enter a vessel, aircraft or vehicle with the consent of the person in control, or under a warrant in the company of an inspector, where the warrant has been issued to the inspector.

Clause 23: Powers of authorised officers

Authorised officers have powers of entry and inspection for the purpose of acting as representatives of Australia in relation to a Treaty inspection in accordance with Annex 4 of the Treaty. Their powers include powers of inspection, examination, taking samples, taking extracts from and copying documents and such other powers as are necessary or appropriate for acting as a representative of Australia at a Treaty inspection. The authorised officer may enter premises or land with the consent of the occupier or under warrant in the company of an inspector and may enter a vessel, aircraft or vehicle with the consent of the person in control or under a warrant in the company of an inspector, where the warrant has been issued to the inspector.

Clause 24: Inspectors may require information etc.

A person committing or suspected of committing an offence against the Act must state his/her name and address to an inspector if requested to do so. The inspector must produce his/her identity card when making such a request. Failure to comply with the request is an offence, incurring a fine not exceeding \$1000.

Clause 25: Offence-related searches and seizures

Where an inspector believes on reasonable grounds that there may be an article or thing on any premises, vessel, aircraft or vehicle which may afford evidence of an offence under the Act, the inspector may enter and search for and seize any such article or thing. Entry may be carried out with the consent of the occupier or person in control or upon warrant. 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 or thing may be retained for 60 days or, if court proceedings are instituted within this time, until those proceedings are terminated. The Minister may authorise the return of the seized article unconditionally or upon such conditions as the Minister thinks fit.

Clause 26: 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 27: 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 Minister may authorise the return of the article unconditionally or subject to conditions.

Clause 28: 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 29: Inspectors, Treaty inspectors and authorised officers 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. A Treaty inspector must produce a copy of the declaration by the Minister declaring the person to be a Treaty inspector to the person in charge of the land, premises, vessel, aircraft or vehicle in order to exercise his/her powers. An authorised officer must produce his/her identity card to the person in charge of the land, premises, vessel, aircraft or vehicle in order to exercise his/her powers.

Clause 30: Delegation by the Minister

The Minister is empowered to delegate to an officer of the Department of Foreign Affairs all or any of his powers under the Bill other than the power of delegation.

Clause 31: Forfeiture

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

Clause 32: Offence against 2 or more provisions

A person is not liable to be punished under the Bill more than once in respect of the same act.

Clause 33: Consent to prosecutions

Proceedings for commitment for trial for an offence under Part II of the Bill require the written consent of the Attorney-General.

Clause 34: Hearing in camera, etc.

A court may order that, in order to prevent the disclosure of sensitive information, proceedings for an offence under this Act 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: \$10,000 and/or 5 years, or \$50,000 for a body corporate.

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

Clause 35: Regulations

Regulations may be made by the Governor-General for the administration of the Act.

