Non-Proliferation Legislation Amendment Act 2003

No. 132, 2003

An Act to amend laws about non-proliferation of nuclear and chemical weapons, and for related purposes

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm)

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Non-Proliferation Legislation Amendment Act 2003

No. 132, 2003

An Act to amend laws about non-proliferation of nuclear and chemical weapons, and for related purposes

[*Assented to 12 December 2003*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Non-Proliferation Legislation Amendment Act 2003*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	12 December 2003
2. Schedule 1	The day after this Act receives the Royal Assent	13 December 2003
3. Schedules 2 and 3	The day on which this Act receives the Royal Assent	12 December 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Nuclear safeguards

Part 1—Main amendments

Nuclear Non-Proliferation (Safeguards) Act 1987

1 Subsection 4(1) (paragraph (a) of the definition of *associated material*)

Omit "the construction or operation of a nuclear reactor", substitute "nuclear activities, the construction of a nuclear reactor or the production of nuclear weapons or other nuclear explosive devices".

2 Saving of declarations of associated material

(1) This item applies to a declaration that:

(a) declared a class of material to be associated material for the purposes of the definition of ***associated material*** in subsection 4(1) of the *Nuclear Non-Proliferation (Safeguards) Act 1987*; and

(b) was in force immediately before the commencement of this Schedule.

(2) The amendment of paragraph (a) of that definition made by this Schedule does not affect the validity of the declaration at and after that commencement, so far as the declaration declared a class of material specially suited for use in the operation of a nuclear reactor to be associated material.

3 Subsection 4(1) (definition of *containment device*)

After "barrier", insert ", or other device,".

4 Subsection 4(1) (after paragraph (a) of the definition of *containment device*)

Insert:

(aa) a nuclear facility; or

5 Subsection 4(1) (definition of *permit*)

Repeal the definition, substitute:

permit means a permit under section 13, 16 or 16A.

6 Subsection 4(1) (at the end of paragraph (a) of the definition of *surveillance device*)

Add "or".

7 Subsection 4(1) (after paragraph (a) of the definition of *surveillance device*)

Insert:

(aa) movements of a person or thing past or through a containment device; or

(ab) circumvention of a containment device or surveillance device; or

8 Part II (heading)

Repeal the heading, substitute:

Part II—Control of nuclear material, associated items and related facilities

9 Subsection 12(1)

Omit "under subsection 13(1) or 16(1)".

10 After section 16

Insert:

16A Permit to establish facility

Grant of permit

(1) The Minister may grant a written permit for work to be carried out to establish a facility described in paragraph 28A(1)(a), but only if the Director's report under paragraph 12(2)(b) relating to the application for the permit states that the Director is satisfied that:

(a) the applicant for the permit has provided the Director with all information the applicant was required under paragraph 12(2)(a) to provide in relation to the application; and

(b) appropriate procedures could be applied at the facility for the implementation of the Australian safeguards system in

relation to nuclear material and associated items to be stored or used at the facility; and

(c) adequate physical security could be applied to nuclear material and associated items at the facility.

Note: Paragraph 28A(1)(a) describes the following facilities:

(a) a nuclear facility;

(b) a facility for the carrying out of nuclear activities;

(c) a facility for the use of associated equipment to which this Part applies.

Restrictions and conditions

(2) The permit is granted subject to the restrictions and conditions specified in it.

(3) The permit may specify restrictions and conditions in respect of:

(a) design of the facility to facilitate:

(i) the operation of the Australian safeguards system in relation to the facility; and

(ii) the physical security of nuclear material or an associated item that is to be stored or used in the facility; and

(b) inspection of the work and the facility by inspectors and Agency inspectors; and

(c) reports relating to the work and the facility (including reports on incidents affecting the work or the facility).

(4) A condition in respect of the doing of an act or thing may be specified by reference to the approval or consent of a specified person being obtained before the act or thing may be done.

(5) Subsections (3) and (4) do not limit the restrictions and conditions that may be specified in the permit.

Variation of permit

(6) The Minister may vary in writing the permit. The variation takes effect on the day on which notice of the variation is given under subsection 22(1) to the holder of the permit or on a later day specified in the variation.

11 Subsections 19(1) and (3)

Omit “granted under section 13, 16 or 18”.

12 Subsections 20(1) and (3)

Omit “pursuant to section 13, 16, 18 or 19”.

13 Paragraph 22(1)(a)

Omit “under subsection 13(1) or 16(1)”.

14 Paragraph 22(1)(b)

Omit “under section 13 or 16”.

15 Paragraph 22(1)(c)

Omit “under subsection 13(10) or 16(9)”.

16 Paragraph 22(1)(d)

After “subsection”, insert “16A(1) or”.

17 Paragraph 22(4)(b)

Omit “, pursuant to subsection 13(2) or 16(2),”.

18 Subsection 23(1)

Omit “by:”, substitute “by imprisonment for not more than 5 years.”.

19 Paragraphs 23(1)(c) and (d)

Repeal the paragraphs.

20 Subsection 25(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

21 After section 25

Insert:

25A Breach of duty to ensure security of associated technology

(1) A person commits an offence if:

(a) the person is authorised to deal with associated technology to which Part II applies by the holder of a permit to possess the associated technology; and
(b) the person has not been granted a permit to possess the associated technology; and
(c) the person is required to ensure the physical security of the associated technology; and
(d) the person engages in conduct; and
(e) the conduct contravenes the requirement.

Penalty: Imprisonment for 2 years.

(2) In this section:

engage in conduct means:
(a) do an act; or
(b) omit to perform an act.

(3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

22 Application of new offence

Section 25A of the *Nuclear Non-Proliferation (Safeguards) Act 1987* applies to conduct occurring at or after the commencement of this Schedule, whether the authorisation to deal with the associated technology was given before or after that commencement.

23 Subsection 26(1)

Omit "by:", substitute "by imprisonment for not more than 2 years.".

24 Paragraphs 26(1)(c) and (d)

Repeal the paragraphs.

25 At the end of section 26

Add:

(5) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

26 After section 26

Insert:

26A Communication prejudicing security of nuclear material or associated item

(1) A person commits an offence if:

(a) the person communicates information to someone else; and

(b) the person knows that the communication could prejudice the physical security of nuclear material, or an associated item, to which Part II applies.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if the communication is authorised by a person who has been granted a permit to possess the nuclear material or associated item.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

27 Application of new offence

Section 26A of the *Nuclear Non-Proliferation (Safeguards) Act 1987* applies to conduct occurring at or after the commencement of this Schedule.

28 Subsection 27(2)

Omit "by:", substitute "by imprisonment for not more than 2 years.".

29 Paragraphs 27(2)(c) and (d)

Repeal the paragraphs.

30 Section 28

Omit "by:", substitute "by imprisonment for not more than 2 years.".

31 Paragraphs 28(c) and (d)

Repeal the paragraphs.

32 After section 28

Insert:

28A Establishment of facility without permit

(1) A person commits an offence if:

(a) the person causes work to be carried out to establish a facility that is:

(i) a nuclear facility; or

(ii) a facility for the carrying out of nuclear activities; or

(iii) a facility for the use of associated equipment to which Part II applies; and

(b) the work consists of:

(i) construction of the facility; or

(ii) modification of an existing facility that is not a facility described in paragraph (a); and

(c) the person does not hold a permit for the work to be carried out.

Penalty: Imprisonment for 5 years.

(2) To avoid doubt, intention is the fault element for paragraph (1)(a).

33 Application of new offence

(1) Section 28A of the *Nuclear Non-Proliferation (Safeguards) Act 1987* applies to causing work to be carried out after the commencement of this Schedule, even if the work started to be carried out (as a result of that cause) before that commencement.

(2) However, causing work to be carried out in the 6 months starting on the commencement of this Schedule is not an offence against that section if the work started to be carried out (as a result of that cause) before that commencement.

34 Subsection 29(1)

Omit "to construct a nuclear facility or".

Note: The heading to section 29 is altered by omitting "*construction or*".

35 Subsection 29(1)

Omit "construction or".

36 Subsection 29(2)

Omit "to construct a nuclear facility or".

37 Subsection 29(2)

Omit "construction or" (wherever occurring).

38 Subsection 29(2)

Omit "by:", substitute "by imprisonment for not more than 2 years.".

39 Paragraphs 29(2)(c) and (d)

Repeal the paragraphs.

40 Paragraph 29(3)(a)

Omit "construction or".

41 Subsection 30(1)

Omit "by:", substitute "by imprisonment for not more than 2 years.".

42 Paragraphs 30(1)(c) and (d)

Repeal the paragraphs.

43 Subsection 31(1)

Omit "by:", substitute "by imprisonment for not more than 6 months.".

44 Paragraphs 31(1)(a) and (b)

Repeal the paragraphs.

45 At the end of Division 1 of Part III

Add:

31A Unauthorised access to areas etc. to which access is restricted under permit

(1) A person commits an offence if:

(a) the person enters an area or gets onto or into a vehicle, aircraft or ship; and

(b) the holder of a permit is required by a condition on the permit:

(i) to restrict access to the area, vehicle, aircraft or ship to persons who have been authorised by the holder; and

(ii) to mark the area, vehicle, aircraft or ship with signs indicating that entering or getting onto or into it without the authorisation of the holder of a permit is an offence under this Act; and

(c) the area, vehicle, aircraft or ship is clearly marked with signs indicating that entering or getting onto or into it without the authorisation of the holder of a permit is an offence under this Act.

Penalty: Imprisonment for 6 months.

(2) Strict liability applies to paragraphs (1)(b) and (c).

(3) Subsection (1) does not apply if the person is authorised by the holder of the permit described in paragraph (1)(b) to enter the area or get onto or into the vehicle, aircraft or ship.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

46 Application of new offence

Section 31A of the *Nuclear Non-Proliferation (Safeguards) Act 1987* applies to conduct occurring at or after the commencement of this Schedule, whether the permit described in paragraph 31A(1)(b) of that Act was granted before or after that commencement.

47 Sections 33, 34, 35, 36 and 37 (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years.

48 Subsection 40(1)

After "4(1)", insert "or of information of a kind whose disclosure could prejudice the physical security of nuclear material or an associated item".

49 Subsection 40(2)

Omit "by:", substitute "by imprisonment for not more than 5 years.".

50 Paragraphs 40(2)(a) and (b)

Repeal the paragraphs.

51 Subsection 40(3)

Omit "referred to in the definition of ***associated technology*** in subsection 4(1)", substitute "described in subsection (1)".

52 Subsection 41(3) (definition of *relevant permit*)

Omit "under section 13 or 16".

53 Subsection 58(2) (penalty)

Repeal the penalty, substitute:

Penalty: 1 penalty unit.

54 Subsection 65(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

55 Subsection 66(4)

Omit "$1,000", substitute "10 penalty units".

56 Paragraph 69(1)(a)

Repeal the paragraph.

57 Paragraph 69(1)(b)

Omit "under section 16".

58 Subsection 69(2)

Omit "under section 13 or 16 or an authority under section 18", substitute "or authority".

59 Subsection 69(3)

Omit "under section 13 or 16".

60 Saving of Register

The amendments of section 69 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* made by this Schedule do not affect the validity at or after the commencement of this Schedule of the Register as it was in force immediately before that commencement.

61 Subsection 71(2) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years.

62 Subsections 72(4) and (5)

Omit "under section 13 or 16".

63 At the end of subsection 72(5)

Add:

; (c) subsection 16A(1) applies in relation to the grant of a permit by the Director acting under the delegation as if that subsection permitted the grant only if the Director is satisfied of the matters described in paragraphs 16A(1)(a), (b) and (c).

64 Saving of delegations

The amendment of subsection 72(4) of the *Nuclear Non-Proliferation (Safeguards) Act 1987* made by this Schedule does not affect the validity at or after the commencement of this Schedule of a delegation described in that subsection that was in force immediately before that commencement.

65 At the end of paragraph 73(2)(a)

Add "and".

66 After paragraph 73(2)(b)

Insert:

(ba) in the case of a permit granted under section 16A—any matter referred to in paragraph 16A(3)(a), (b) or (c); and

67 Paragraph 74(c)

Omit "$1,000", substitute "10 penalty units".

68 Paragraph 74(d)

Omit "under section 13 or 16".

69 Paragraph 74(g)

Omit "under section 13 or 16".

70 Saving of regulations

The amendments of section 74 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* made by this Schedule do not affect the validity at or after the commencement of this Schedule of any regulations in force under that Act immediately before that commencement.

Part 2—Consequential amendments

Australian Protective Service Act 1987

71 Subparagraph 13(2)(a)(v)

Omit "27,", substitute "25A, 27 or 28A,".

Australian Radiation Protection and Nuclear Safety Act 1998

72 Subsection 82(1)

Omit "and 26", substitute ", 25A, 26 and 26A".

Schedule 2—Nuclear test ban

Comprehensive Nuclear Test-Ban Treaty Act 1998

1 Section 2

Repeal the section, substitute:

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	At the same time as Schedule 2 to the *Non-Proliferation Legislation Amendment Act 2003* commences	
2. Sections 3 to 7	A day or days to be fixed by Proclamation, subject to subsection (3)	
3. Part 2	A day or days to be fixed by Proclamation, subject to subsection (3)	
4. Part 3	The day on which the Treaty enters into force for Australia	
5. Part 4, Division 1	A day or days to be fixed by Proclamation, subject to subsection (3)	
6. Part 4, Divisions 2 and 3	The day on which the Treaty enters into force for Australia	
7. Parts 5 and 6	A day or days to be fixed by Proclamation, subject to subsection (3)	
8. Schedule 1	A day to be fixed by Proclamation, subject to subsection (3)	

Note: This table relates only to the provisions of this Act as amended by the *Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001* and the *Non-Proliferation Legislation*

Amendment Act 2003. It will not be expanded to deal with other provisions inserted in this Act.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

(3) If a provision covered by item 2, 3, 5, 7 or 8 of the table does not commence before the day on which the Treaty enters into force for Australia, it commences on that day.

(4) The Minister must announce by notice in the *Gazette* the day on which the Treaty enters into force for Australia.

2 Section 7

Insert:

clarification inspection area means an area the Minister specifies in a declaration under section 17A.

3 Section 7

Insert:

inspection area means an area the Minister declares to be an inspection area under section 11.

4 Section 7 (definition of *inspection site*)

Repeal the definition.

5 Section 7 (definition of *occupier*)

Repeal the definition, substitute:

occupier of premises includes a person on the premises who apparently represents the occupier of the premises.

6 Division 2 of Part 3 (heading)

Repeal the heading, substitute:

Division 2—On-site inspections etc.

7 Subsections 11(1) and (2)

Repeal the subsections, substitute:

(1) If a request for an on-site inspection (within the meaning of the Treaty) in Australia is made under Article IV of the Treaty:

(a) the Director may give the Organization any information or documents about occurrences that will help to clarify and resolve the concern raised in the request; and

(b) the Minister may make a written declaration:

(i) that the inspection is an on-site inspection for the purposes of this Act; and

(ii) that the area specified in the declaration is an inspection area for the purposes of this Act.

(2) An Organization inspector may, anywhere in an inspection area, enter premises and exercise on the premises any on-site inspection powers for an on-site inspection purpose, either:

(a) with the consent of the occupier of the premises; or

(b) under a warrant issued to a national inspector under section 21 in relation to the premises;

subject to sections 27 and 28.

8 Subsection 11(4)

Omit “an inspection site”, substitute “premises in an inspection area”.

9 Paragraph 11(4)(a)

Omit “site”, substitute “premises”.

10 Subsection 11(5)

Omit “an inspection site”, substitute “premises in an inspection area”.

11 Paragraph 11(5)(a)

Omit “site”, substitute “premises”.

12 Paragraph 12(1)(a)

Omit “an inspection site”, substitute “premises in an inspection area”.

13 Paragraph 12(1)(b)

Omit “of the site”, substitute “of the premises”.

14 Paragraph 12(1)(b)

Omit “or in the site”, substitute “the premises”.

15 Paragraphs 12(1)(c), (d), (h) and (m)

Omit "site", substitute "premises".

16 Paragraph 12(1)(n)

Omit "at the site", substitute "on the premises".

17 Paragraph 12(1)(o)

Omit "site", substitute "premises".

18 Subsection 12(2)

Omit "at the inspection site", substitute "on the premises where the power is to be exercised".

19 Subsection 15(3)

Omit "an inspection site", substitute "premises in an inspection area".

20 Subsection 15(4)

Repeal the subsection, substitute:

(4) However, an observer is not entitled to enter premises in an inspection area, or any particular part of the premises, if the occupier of the premises has informed the Director, in writing, that the observer is to be excluded from the premises or from that part of the premises. If the occupier so informs the Director, the Director must inform the observer to that effect in writing.

21 Subsection 15(5)

Omit "an inspection site", substitute "premises in an inspection area".

22 Paragraph 15(5)(a)

Omit "site", substitute "premises".

23 Section 16

Omit "an inspection of premises", substitute "an on-site inspection (within the meaning of the Treaty) in Australia".

24 Section 16

Omit "at particular premises".

25 Section 17

Omit "at the premises".

26 After section 17

Insert:

17A Declaration of clarification inspection area

The Minister may make a written declaration specifying an area (the ***clarification inspection area***) for the purposes of the clarification.

27 Paragraphs 18(1)(a) and (b)

Omit "the premises", substitute "premises in the clarification inspection area".

28 Paragraph 18(1)(d)

Repeal the paragraph, substitute:

(d) the clarification inspection area had been declared to be an inspection area;

29 Subsection 19(1)

Omit "the premises concerned", substitute "premises in the clarification inspection area".

30 Subsection 21(1)

Omit "an inspection site", substitute "premises in an inspection area".

31 Subsection 21(1)

Omit "the site" (wherever occurring), substitute "the premises".

32 Subsection 21(2)

Omit "inspection site", substitute "premises".

33 Subsection 22(1)

Omit "an inspection site", substitute "premises in a clarification inspection area".

34 Subsection 22(2)

Omit “particular premises mentioned in section 16”, substitute “the premises”.

35 Subsection 24(1)

Omit “particular premises”, substitute “premises in an inspection area”.

36 Subsection 24(2)

Omit “particular premises”, substitute “premises in a clarification inspection area”.

37 Section 26

Omit “an inspection site”, substitute “premises in an inspection area”.

38 Section 27

Omit “(whether or not involving a preliminary inspection)”.

39 Section 28

Omit “initial”.

40 Subsection 41(1)

Omit “an inspection site or other premises”, substitute “premises in an inspection area or clarification inspection area”.

41 Paragraphs 41(1)(a) and (b)

Omit “site or”.

Schedule 3—Alternative names

Chemical Weapons (Prohibition) Act 1994

1 At the end of section 86

Add:

(3) The Director may be referred to by another title specified by the Minister by notice in the *Gazette*.

2 At the end of section 88

Add:

(2) The Office may be referred to by another name specified by the Minister by notice in the *Gazette*.

Comprehensive Nuclear Test-Ban Treaty Act 1998

3 At the end of section 62

Add:

(3) The Office may be referred to by another name specified by the Minister by notice in the *Gazette*. The notice may be included in the copy of the designation published in the *Gazette* or published separately in the *Gazette*.

4 At the end of section 63

Add:

(2) The Director may be referred to by another title specified by the Minister by notice in the *Gazette*. The notice may be included in the copy of the designation published in the *Gazette* or published separately in the *Gazette*.

Nuclear Non-Proliferation (Safeguards) Act 1987

5 At the end of section 42

Add:

(6) The Director may be referred to by another title specified by the Minister by notice in the *Gazette*.

6 At the end of section 54

Add:

(3) The Office may be referred to by another name specified by the Minister by notice in the *Gazette*. This subsection has effect despite subsection (1).

[*Minister's second reading speech made in—*
House of Representatives on 26 June 2003
Senate on 24 November 2003]

(117/03)