



# **Nuclear Non-Proliferation (Safeguards) Act 1987**

**No. 8, 1987**

## **Compilation No. 20**

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**This compilation includes commenced amendments made by Act No. 50,  
2007**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Nuclear Non-Proliferation (Safeguards) Act 1987* that shows the text of the law as amended and in force on 8 May 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**An Act to make provision in relation to the non-proliferation of nuclear weapons and to establish, in accordance with certain international treaties and agreements to which Australia is a party, a system for the imposition and maintenance of nuclear safeguards in Australia, and for related matters**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

### **2 Commencement**

- (1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

### **3 Objects of Act**

- (1) The principal object of this Act is to give effect to certain obligations that Australia has as a party to the Non-Proliferation Treaty, the Agency Agreement, the Supplementary Agency Agreements and the prescribed international agreements.
- (2) A further object of this Act is to give effect to certain obligations that Australia has as a party to the Physical Protection Convention.

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- (3) A further object of this Act is to give effect to certain obligations that Australia has as a party to the Nuclear Terrorism Convention.

#### 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

**Agency** means the International Atomic Energy Agency established by the Agency Statute.

**Agency Agreement** means the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, being the Agreement which was signed on behalf of Australia on 10 July 1974, a copy of which is set out in Schedule 3, and:

- (a) subject to subsection (3), includes that Agreement as amended from time to time; and
- (b) subject to section 4A, includes that Agreement as modified from time to time by the Supplementary Agency Agreements.

**Agency inspector** means a person declared, pursuant to subsection 57(2), to be an Agency inspector for the purposes of this Act.

**Agency Statute** means the Statute of the International Atomic Energy Agency, being the Statute which was signed on behalf of Australia on 14 December 1956 and, subject to subsection (3), includes that Statute as amended from time to time.

**amendment**, in relation to a document, means an amendment of the text of the document.

**appoint** includes re-appoint.

**approved form** means a form approved by the Minister.

**article** includes document, substance or equipment.

***associated equipment*** means equipment or plant that:

- (a) is specially designed, manufactured or built for use, or is specially suited (whether with or without modification or adaptation) for use, in:
  - (i) nuclear activities; or
  - (ii) the production of nuclear weapons or other nuclear explosive devices; and
- (b) is included in a class of equipment or plant that is declared by the Minister, in writing, to be associated equipment for the purposes of this definition;

and includes a component or part of such equipment or plant.

***associated item*** means:

- (a) associated material;
- (b) associated equipment; or
- (c) associated technology.

***associated material*** means any material (other than nuclear material, associated equipment or associated technology) that:

- (a) is of a kind specially suited for use in nuclear activities, the construction of a nuclear reactor or the production of nuclear weapons or other nuclear explosive devices; and
- (b) is included in a class of material that is declared by the Minister, in writing, to be associated material for the purposes of this definition.

***associated technology*** means any document that contains information (other than information that is lawfully available, whether within Australia or outside Australia and whether for a price or free of charge, to the public or a section of the public):

- (a) that is applicable primarily to the design, production, operation, testing or use of:
  - (i) equipment or plant for:
    - (A) the enrichment of nuclear material;
    - (B) the reprocessing of irradiated nuclear material;
    - or
    - (C) the production of heavy water; or

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- (ii) nuclear weapons or other nuclear explosive devices; or
  - (b) to which a prescribed international agreement applies and that is of a kind declared by the Minister, in writing, to be information to which this definition applies;
- and includes any photograph, model or other thing from which such information may be obtained or deduced.

***Australian aircraft*** means:

- (a) an aircraft registered, or required to be registered, under regulations made under the *Civil Aviation Act 1988*; or
- (b) an aircraft that is owned by, or is in the possession or control of, the Commonwealth or an authority of the Commonwealth; or
- (c) an aircraft of any part of the Defence Force (including an aircraft that is being commanded or piloted by a member of that Force in the course of the member's duties as such a member).

***Australian safeguards system*** means the system of accounting for and control of nuclear material and associated items that is established by:

- (a) this Act;
- (b) the regulations; and
- (c) orders and directions under section 73.

***Australian ship*** means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship that has Australian nationality.

***authority*** means an authority granted under section 18.

***Commonwealth officer*** means:

- (a) a person appointed or engaged under the *Public Service Act 1999*; or
- (b) an officer or employee of a prescribed authority of the Commonwealth;

- (c) the holder of an office established by a law of the Commonwealth; or
- (d) a member of the Defence Force.

**containment device** means a wall, container or other physical barrier, or other device, that is being used, pursuant to a condition of a permit or pursuant to an order or direction under section 73, to prevent, restrict or control the movement of or access to:

- (a) nuclear material or an associated item; or
- (aa) a nuclear facility; or
- (b) information relating to:
  - (i) the location of nuclear material or an associated item or the quantity of nuclear material or associated material at a particular location; or
  - (ii) the safeguards aspects of the design or operation of a nuclear facility, containment device or surveillance device.

**Director** means the Director of Safeguards.

**enrich**, in relation to nuclear material, means increase:

- (a) the abundance in the material of one isotope of an element in relation to the abundance of another isotope or other isotopes of that element; or
- (b) the ratio in the material of one isotope of an element to the total of the isotopes of that element.

**Foreign Affairs Minister** means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

**identity card** means an identity card issued under section 58.

**Immigration Minister** means the Minister administering the *Migration Act 1958*.

**inspector** means a person appointed as an inspector under subsection 57(1).

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***international agreement*** includes an international treaty or convention.

***international organisation*** means:

- (a) an organisation of which 2 or more countries, or the Governments of 2 or more countries, are members;
- (b) an organisation that is constituted by the representatives of 2 or more countries, or the Governments of 2 or more countries; or
- (c) an organisation established by, or a group of organisations constituted by:
  - (i) organisations of which 2 or more countries, or the Governments of 2 or more countries, are members; or
  - (ii) organisations that are constituted by the representatives of 2 or more countries, or the Governments of 2 or more countries.

***Non-Proliferation Treaty*** means the Treaty on the Non-Proliferation of Nuclear Weapons, being the Treaty which was signed on behalf of Australia on 27 February 1970, a copy of the English text of which is set out in Schedule 2, and, subject to subsection (3), includes that Treaty as amended from time to time.

***nuclear activities*** means:

- (a) the operation of a nuclear reactor, whether for the purposes of generating power or otherwise;
- (b) the enrichment of nuclear material;
- (c) the reprocessing of irradiated nuclear material; or
- (d) any other activity (including storage) that forms part of the nuclear fuel cycle.

***nuclear facility*** means a facility within the meaning of the Agency Agreement.

***nuclear fuel cycle*** has the same meaning as it has when used in the Agency Agreement.

**nuclear material** has the same meaning as in the Agency Agreement.

**Nuclear Terrorism Convention** means the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on 13 April 2005, as amended and in force for Australia from time to time.

Note: In 2012, the text of the Convention was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**offence against this Act** includes:

- (a) an offence against the regulations;
- (b) an offence against section 6 of the *Crimes Act 1914* in relation to an offence against this Act or the regulations; and
- (c) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* in relation to an offence against this Act or the regulations.

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

**Physical Protection Convention** means the Convention on the Physical Protection of Nuclear Material, being the Convention which was signed on behalf of Australia on 22 February 1984, a copy of the English text of which is set out in Schedule 4, and, subject to subsection (3), includes that Convention as amended from time to time.

**prescribed authority of the Commonwealth** means an authority of the Commonwealth prescribed by the regulations for the purposes of this definition.

**prescribed international agreement** means:

- (a) an agreement the title of which is set out in Schedule 5; or

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- (b) an agreement between Australia and a foreign country or foreign countries in relation to nuclear safeguards or the peaceful use of nuclear material or associated items, being an agreement that is prescribed by the regulations for the purposes of this definition;

and, subject to subsection (3), includes such an agreement as amended from time to time.

**Register** means the Register of Permit and Authority Holders kept in accordance with section 69.

**reprocess**, in relation to irradiated nuclear material, means separate uranium or plutonium from fission products in the material.

**Supplementary Agency Agreement** has the meaning given by section 4A.

**surveillance device** means a seal, camera, closed-circuit television system or other device that is being used, pursuant to a condition of a permit or pursuant to an order or direction under section 73, to detect:

- (a) movements of nuclear material or an associated item; or
  - (aa) movements of a person or thing past or through a containment device; or
  - (ab) circumvention of a containment device or surveillance device; or
  - (b) interference with a containment device or surveillance device; or
  - (c) the falsification of records relating to:
    - (i) the location of nuclear material or an associated item; or
    - (ii) the quantity of nuclear material or associated material at a particular location.
- (2) A reference in the definition of **prescribed international agreement** in subsection (1) to a foreign country includes a reference to an international organisation.



- (3) An amendment to the Agency Agreement, the Agency Statute, the Non-Proliferation Treaty, the Physical Protection Convention or a prescribed international agreement:
  - (a) does not have effect for the purposes of this Act unless the amendment is declared by the regulations to have effect for the purposes of this Act; and
  - (b) takes effect for the purposes of this Act from the day on which the regulations referred to in paragraph (a) take effect or such later day as is specified in those regulations.
- (4) Where the Board of Governors of the Agency makes a determination of the kind referred to in the definition of *special fissionable material*, or *source material*, in Article XX of the Agency Statute (a copy of the English text of which is set out in Schedule 1), the determination does not have effect for the purposes of this Act unless and until the regulations declare that the determination is to have effect for the purposes of this Act.
- (5) Where regulations are made for the purposes of subsection (4) in relation to a determination of the Board of Governors of the Agency, the determination shall be taken, for the purposes of the definition of *nuclear material* in the Agency Agreement, to be accepted by Australia.
- (6) Where a person gives another person, or allows another person to take, possession of associated technology, the first-mentioned person shall, for the purposes of this Act, be taken to have communicated to that other person the information that is contained in, or that may be obtained or deduced from, that associated technology.
- (7) Declarations made under the definitions of *associated equipment*, *associated material* and *associated technology* in subsection (1) are legislative instruments.
- (10) A reference in this Act to an inspection by an Agency inspector includes a reference to access by the inspector.

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**4A Supplementary Agency Agreements**

- (1) For the purposes of this Act, ***Supplementary Agency Agreement*** means an IAEA agreement that is additional to the Agency Agreement, and includes such an IAEA agreement as amended from time to time.
- (2) An IAEA agreement, or an amendment of an IAEA agreement, does not have effect for the purposes of this Act unless the agreement or amendment, as the case may be, is declared by the regulations to have effect for the purposes of this Act.
- (3) An IAEA agreement, or an amendment of an IAEA agreement, takes effect for the purposes of this Act from:
  - (a) the day on which the regulations referred to in subsection (2) take effect; or
  - (b) such later day as is specified in those regulations.
- (4) In this section:

***IAEA agreement*** means an agreement between Australia and the International Atomic Energy Agency, but does not include:

  - (a) the Agency Agreement; or
  - (b) an agreement that amends the Agency Agreement.

**5 Conduct by directors, employees or agents**

- (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
  - (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or

- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;
- shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.
- (3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;
- shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.
- (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

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**6 Act to extend to external Territories**

This Act extends to every external Territory.

**7 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

**8 Application of Act (other than Division 2A of Part III)**

- (1A) This section does not apply in relation to Division 2A of Part III (which deals with offences relating to the Nuclear Terrorism Convention).
- (1) The provisions of this Act have effect in relation to all nuclear material.
- (2) The provisions of this Act have effect in relation to all associated items.
- (3) Without prejudice to their effect by virtue of subsection (2), the provisions of this Act have effect in relation to an associated item:
  - (a) control of which is appropriate to give effect to obligations that Australia has as a party to the Non-Proliferation Treaty, the Agency Agreement, a Supplementary Agency Agreement or a prescribed international agreement (including the obligation that Australia has under Article II of the Non-Proliferation Treaty not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices);
  - (b) that is owned by, or is in the possession or control of, a trading corporation or foreign corporation;
  - (c) that is situated in a Territory or is owned by or in the possession or control of:
    - (i) a resident of a Territory; or
    - (ii) a corporation established by or under a law of a Territory;

- (d) that is in the course of trade or commerce:
    - (i) between Australia and places outside Australia;
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories;
  - (e) that is supplied to the Commonwealth or an authority or instrumentality of the Commonwealth;
  - (f) that is owned by, or is in the possession or control of, the Commonwealth or an authority or instrumentality of the Commonwealth; or
  - (g) that is in the course of transmission through postal, telegraphic, telephonic or a like service.
- (4) Without prejudice to their effect by virtue of subsection (3), the provisions of this Act have effect in relation to an associated item that is owned by, or is in the possession or control of, a trading corporation in the course of the trading activities of the trading corporation.
- (5) Without prejudice to their effect by virtue of subsection (2), the provisions of this Act have effect in relation to an associated item control of which is appropriate to give effect to obligations that Australia has as a party to the Physical Protection Convention.
- (6) The provisions of this Act have effect in relation to all information of the kinds referred to in the definition of ***associated technology*** in subsection 4(1).
- (7) Without prejudice to their effect by virtue of subsection (6), the provisions of this Act have effect in relation to information of the kinds referred to in the definition of ***associated technology*** in subsection 4(1):
- (a) control of which is appropriate to give effect to obligations that Australia has as a party to the Non-Proliferation Treaty, the Agency Agreement or a prescribed international agreement (including the obligation that Australia has under Article II of the Non-Proliferation Treaty not to manufacture

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- or otherwise acquire nuclear weapons or other explosive nuclear devices);
  - (b) communicated by a trading corporation or foreign corporation;
  - (c) communicated in a Territory or communicated by:
    - (i) a resident of a Territory; or
    - (ii) a corporation established by or under a law of a Territory;
  - (d) communicated in the course of trade or commerce:
    - (i) between Australia and places outside Australia;
    - (ii) among the States; or
    - (iii) between a State and a Territory or between 2 Territories;
  - (e) communicated by an authority or instrumentality of the Commonwealth; or
  - (f) communicated in the course of transmission through postal, telegraphic, telephonic or a like service.
- (8) Without prejudice to their effect by virtue of subsection (7), the provisions of this Act have effect in relation to information of the kinds referred to in the definition of ***associated technology*** in subsection 4(1) communicated by a trading corporation in the course of the trading activities of the trading corporation.
- (9) Without prejudice to their effect by virtue of subsection (6), the provisions of this Act have effect in relation to information of the kinds referred to in the definition of ***associated technology*** in subsection 4(1) control of which is appropriate to give effect to obligations that Australia has as a party to the Physical Protection Convention.
- (10) In this section:
- foreign corporation*** has the same meaning as in paragraph 51(xx) of the Constitution.
- postal, telegraphic, telephonic or a like service*** has the same meaning as in paragraph 51(v) of the Constitution.

***trading corporation*** means a trading corporation, within the meaning of paragraph 51(xx) of the Constitution, formed within the limits of the Commonwealth.

## **8A Application of the *Criminal Code***

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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

### **9 Nuclear material to which this Part applies**

This Part applies to all nuclear material other than:

- (a) nuclear material in respect of which a declaration under subsection 11(1) is in force;
- (b) nuclear material in respect of which a declaration under subsection 11(3) is in force; and
- (c) nuclear material that, in accordance with the regulations, is nuclear material of a kind to which this Part does not apply.

### **10 Associated items to which this Part applies**

This Part applies to associated items other than:

- (a) items in respect of which a declaration under subsection 11(7) is in force; and
- (b) items that, in accordance with the regulations, are associated items of a kind to which this Part does not apply.

### **11 Exemption and termination declarations**

- (1) The Minister may, subject to subsection (2), declare, in writing, that nuclear material specified in the declaration is nuclear material that is exempt from the application of this Part.
- (2) The Minister shall not make a declaration under subsection (1) exempting nuclear material from the application of this Part unless:
  - (a) the Agency has, in accordance with Articles 37 and 38 of the Agency Agreement, exempted the nuclear material from safeguards; and
  - (b) the making of the declaration is not inconsistent with Australia's obligations under any prescribed international agreement.



- (3) The Minister may, subject to subsection (4), declare, in writing, that the application of this Part to nuclear material specified in the declaration is terminated.
- (4) The Minister shall not make a declaration under subsection (3) terminating the application of this Part to nuclear material unless:
  - (a) safeguards have, in accordance with Articles 11, 12, 13 and 36 of the Agency Agreement, terminated in respect of the nuclear material; and
  - (b) the making of the declaration is not inconsistent with Australia's obligations under any prescribed international agreement.
- (5) The Minister may, in writing, vary or revoke a declaration made under subsection (1) or (3).
- (6) The Minister shall revoke a declaration made under subsection (1) exempting nuclear material from the application of this Part if the nuclear material:
  - (a) is processed or stored together with nuclear material to which this Part applies; or
  - (b) is returned to use in nuclear activities.
- (7) The Minister may, subject to subsection (8), declare, in writing, that an associated item specified in the declaration is an associated item that is exempt from the application of this Part.
- (8) The Minister shall not make a declaration under subsection (7) exempting an associated item from the application of this Part unless the making of the declaration is not inconsistent with Australia's obligations under any prescribed international agreement.
- (9) The Minister may, in writing, vary or revoke a declaration made under subsection (7).
- (10) A declaration, or a variation or revocation of a declaration, made under this section is a legislative instrument.

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**12 Application for permit**

- (1) A person may make application for the grant of a permit by lodging an application, in accordance with the approved form, with the Director.
- (2) Where a person makes application pursuant to subsection (1), the Director:
  - (a) may, by notice in writing to the person, require the person to provide to the Director, within such period, being a period of not less than 14 days, as is specified in the notice, such information relating to the application as is specified in the notice; and
  - (b) shall, after having considered the application and any information provided pursuant to paragraph (a), give a report in writing to the Minister in relation to the application.
- (3) Where a person who makes application pursuant to subsection (1) fails to comply with a request made by the Director pursuant to paragraph (2)(a), the Director shall include a statement giving particulars of that failure in the report made to the Minister in relation to the application pursuant to paragraph (2)(b).

**13 Permit to possess nuclear material or associated items**

- (1) Subject to sections 14 and 15, the Minister may, in writing, grant to a person a permit to possess:
  - (a) nuclear material; or
  - (b) an associated item;to which this Part applies.
- (2) A permit under subsection (1) is granted subject to such restrictions and conditions as the Minister specifies in the permit.
- (3) Without limiting the generality of subsection (2), a permit under subsection (1) may be granted subject to restrictions and conditions in respect of one or more of the following:
  - (a) the nuclear material, or the class of nuclear material, or the associated item or items, or the class of associated items, as

- the case requires, in relation to which the permit is to have effect;
- (b) the period for which the permit is to have effect;
  - (c) the locations for which the permit is to have effect and the procedures to be followed if nuclear material or an associated item is to be transported from one location to another (including requirements for the giving of notice to the Minister, the Director or any carrier engaged by the holder of the permit);
  - (d) the measures to be taken to ensure the physical security of nuclear material or an associated item;
  - (da) the taking of measures that are consistent with Australia's obligations under the Physical Protection Convention;
  - (e) the persons, or class of persons, who are to be allowed access to nuclear material or an associated item and the conditions on which access to nuclear material or an associated item is to be allowed;
  - (f) the steps to be taken, and the records to be kept, to account for nuclear material or an associated item;
  - (g) the uses to which nuclear material or an associated item may be put;
  - (h) the enrichment of nuclear material or the reprocessing of irradiated nuclear material;
  - (j) the reports to be furnished, and the inspections to be permitted, in respect of nuclear material or an associated item;
  - (k) the transfer by the holder of the permit to another person of property in, or possession or control of, nuclear material or an associated item;
  - (m) if the permit is a permit to possess associated technology—the communication of the information contained in, or that may be obtained or deduced from, the associated technology;
  - (n) the alteration, dispersal or disposal of nuclear material or an associated item;
  - (o) if nuclear material or an associated item is to be held at a nuclear facility—the provision to the Director of information
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in order to allow inspectors or Agency inspectors to comply with health and safety procedures applicable at the facility.

- (4) Without limiting the generality of paragraph (3)(f), a condition of a permit under subsection (1) in respect of the records to be kept to account for nuclear material or an associated item may make provision in relation to:
  - (a) the form and content of such records;
  - (b) the period for which such records are to be kept; and
  - (c) the system of measurement to be used in the preparation of such records.
- (5) Without limiting the generality of paragraph (3)(j), a condition of a permit under subsection (1) in respect of the reports to be furnished in respect of nuclear material or an associated item may make provision in relation to:
  - (a) the form and content of such reports;
  - (b) special reports to be made in relation to unusual or anomalous incidents or circumstances and the form and contents of such special reports;
  - (c) the time within which such reports and special reports are to be made; and
  - (d) the persons who are to verify or authenticate such reports and special reports.
- (6) Without limiting the generality of paragraph (3)(j), a condition of a permit under subsection (1) in respect of the inspections to be permitted in respect of nuclear material or an associated item may make provision in relation to inspections by Agency inspectors pursuant to the Agency Agreement or a Supplementary Agency Agreement.
- (7) Without limiting the generality of subsection (2), a condition in respect of the doing of an act or thing may be imposed by reference to the approval or consent of a specified person being obtained before the act or thing may be done.

- (8) A permit granted under subsection (1) shall have endorsed on it or attached to it a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* and to subsection 22(8) of this Act, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by a decision by the Minister, pursuant to subsection (2) of this section, imposing a condition or restriction on the grant of a permit, for review of the decision.
- (9) A failure to comply with the requirements of subsection (8) in relation to a decision shall not be taken to affect the validity of the decision.
- (10) Subject to subsection 22(1), the Minister may, in writing, vary a permit granted under subsection (1).
- (11) A variation to a permit under subsection (10) takes effect on the day on which notice of the variation is given to the holder of the permit under subsection 22(1) or such later day as is specified in the instrument of variation.

#### **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 under section 13 to the owner or operator of a nuclear facility unless the Director has included in the report made by the Director, pursuant to paragraph 12(2)(b), in relation to the application for the grant of the permit:

- (a) a statement to the effect that the Director is satisfied that the person applying for the grant of the permit has provided the Director with all information that the Director has required the person to provide in relation to the application pursuant to paragraph 12(2)(a); and
- (b) a statement to the effect that the Director is satisfied that:
  - (i) appropriate procedures can be applied at the facility for the implementation of the Australian safeguards system in relation to nuclear material and associated items to be located at the facility; and

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- (ii) adequate physical security can be applied to nuclear material and associated items at the facility.

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

Where nuclear material or an associated item is to be held otherwise than at a nuclear facility, the Minister shall not grant a permit under section 13 in relation to the nuclear material or associated item unless the Director has included in the report made by the Director, pursuant to paragraph 12(2)(b), in relation to the application for the grant of the permit a statement to the effect that the Director is satisfied that the person applying for the grant of the permit has provided the Director with all information that the Director has required the person to provide in relation to the application pursuant to paragraph 12(2)(a).

**16 Special transport permit**

- (1) The Minister may, in writing, grant to a person a permit to possess:
  - (a) nuclear material; or
  - (b) an associated item;to which this Part applies, being material or an item specified in the permit, for the purpose of transporting the material or item from a location specified in the permit to another location specified in the permit.
- (2) A permit under subsection (1) is granted subject to such restrictions and conditions as the Minister specifies in the permit.
- (3) Without limiting the generality of subsection (2), a permit under subsection (1) may be granted subject to restrictions and conditions in respect of:
  - (a) the period for which the permit is to have effect;
  - (b) the means, and the route, by which the nuclear material or associated item is to be transported;

- (c) the measures to be taken to ensure the physical security of the material or item;
  - (d) the steps to be taken, and the records to be kept, to account for the material or item; and
  - (e) the reports to be furnished in respect of the transport of the material or item.
- (4) Without limiting the generality of paragraph (3)(d), a condition of a permit under subsection (1) in respect of the records to be kept to account for nuclear material or an associated item may make provision in relation to:
  - (a) the form and content of such records;
  - (b) the period for which such records are to be kept; and
  - (c) the system of measurement to be used in the preparation of such records.
- (5) Without limiting the generality of paragraph (3)(e), a condition of a permit under subsection (1) in respect of the reports to be furnished in respect of the transport of nuclear material or an associated item may make provision in relation to:
  - (a) the form and content of such reports;
  - (b) special reports to be made in relation to unusual or anomalous incidents or circumstances and the form and contents of such special reports;
  - (c) the time within which such reports and special reports are to be made; and
  - (d) the persons who are to verify or authenticate such reports and special reports.
- (6) Without limiting the generality of subsection (2), a condition in respect of the doing of an act or thing may be imposed by reference to the approval or consent of a specified person being obtained before the act or thing may be done.
- (7) A permit granted under subsection (1) shall have endorsed on it or attached to it a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* and to subsection 22(8) of this Act, application may be made to the Administrative Appeals

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Tribunal, by or on behalf of a person whose interests are affected by a decision by the Minister, pursuant to subsection (2) of this section, imposing a condition or restriction on the grant of a permit, for review of the decision.

- (8) A failure to comply with the requirements of subsection (7) in relation to a decision shall not be taken to affect the validity of the decision.
- (9) Subject to subsection 22(1), the Minister may, in writing, vary a permit granted under subsection (1).
- (10) A variation of a permit pursuant to subsection (9) takes effect on the day on which notice of the variation is given to the holder of the permit under subsection 22(1) or such later day as is specified in the instrument of variation.

**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.

## **16B Permit to decommission facility**

*Grant of permit*

- (1) The Minister may grant a written permit for work to be carried out to decommission the whole or a part of a facility described in

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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 for the implementation of the Australian safeguards system in relation to nuclear material and associated items that, during the decommissioning, are to be removed from the facility or otherwise dealt with; and
- (c) adequate physical security could be applied to nuclear material and associated items that, during the decommissioning, are to be removed from the facility or otherwise dealt with.

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

**17 Application for authority to communicate information**

- (1) A person may make application for the grant of an authority under subsection 18(1) by lodging an application, in accordance with the approved form, with the Director.
- (2) Where a person makes application pursuant to subsection (1), the Director:
  - (a) may, by notice in writing to the person, require the person to provide to the Director, within such period, being a period of not less than 14 days, as is specified in the notice, such information relating to the application as is specified in the notice; and
  - (b) shall, after having considered the application and any information provided pursuant to paragraph (a), make a report in writing to the Minister in relation to the application.
- (3) Where a person who makes application pursuant to subsection (1) fails to comply with a request made by the Director pursuant to paragraph (2)(a), the Director shall include a statement giving particulars of that failure in the report made to the Minister in relation to the application pursuant to paragraph (2)(b).

**18 Authority to communicate information**

- (1) Subject to subsection (2), the Minister may, in writing, authorise a person to communicate to another person information of a kind referred to in the definition of *associated technology* in subsection 4(1).
- (2) The Minister shall not grant an authority under subsection (1) unless the Director has included in the report made by the Director,

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pursuant to paragraph 17(2)(b), in relation to the application for the grant of the authority a statement to the effect that the Director is satisfied that the person applying for the grant of the authority has provided the Director with all information that the Director has required the person to provide in relation to the application pursuant to paragraph 17(2)(a).

- (3) An authority under subsection (1) is granted subject to such restrictions and conditions as the Minister specifies in the authority.
- (4) Without limiting the generality of subsection (3), an authority under subsection (1) may be granted subject to restrictions and conditions in respect of:
  - (a) the information, or the class of information, in relation to which the authority is to have effect;
  - (b) the persons, or class of persons, to whom information may be communicated;
  - (c) the period for which the authority is to have effect; and
  - (d) conditions as to the giving of notice of, and the obtaining of consents for, the communication of information.
- (5) An authority granted under subsection (1) shall have endorsed on it or attached to it a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* and to subsection 22(8) of this Act, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by a decision by the Minister, pursuant to subsection (3) of this section, imposing a condition or restriction on the grant of an authority, for review of the decision.
- (6) A failure to comply with the requirements of subsection (5) in relation to a decision shall not be taken to affect the validity of the decision.
- (7) Subject to subsection 22(1), the Minister may, in writing, vary an authority granted under subsection (1).

- (8) A variation of an authority pursuant to subsection (7) takes effect on the day on which notice of the variation is given to the holder of the authority under subsection 22(1) or such later day as is specified in the instrument of variation.

## **19 Revocation of permit or authority**

- (1) Subject to subsection 22(1), the Minister may, in writing, revoke a permit or authority if the holder of the permit or authority:
- (a) contravenes a condition, or fails to observe a restriction, subject to which the permit or authority is granted;
  - (b) contravenes a direction given or an order made under section 73; or
  - (c) is convicted of an offence against this Act.
- (2) Subsection (1) extends to a contravention or failure that occurs outside Australia.
- (3) The Minister shall revoke a permit or authority if the person to whom the permit or authority was granted requests the Minister, in writing, to do so.
- (4) The revocation of a permit or authority under this section takes effect:
- (a) in a case where the permit or authority is revoked under subsection (1)—on the day on which notice of the revocation is given to the holder of the permit or authority under subsection 22(1) or such later day as is specified in the instrument of revocation; or
  - (b) in a case where the permit or authority is revoked under subsection (3)—on the day on which the instrument of revocation is executed or such later day as is specified in that instrument.

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

- (1) Where the Minister grants, varies or revokes a permit or authority, the Minister shall publish notice in writing in the *Gazette* of the grant, variation or revocation, as the case may be.
- (2) A notice under subsection (1) in relation to the grant, variation or revocation of a permit or authority shall include such particulars in relation to the grant, variation or revocation, as the case may be, as are prescribed by the regulations or, in the absence of regulations prescribing such particulars, such particulars of the grant, variation or revocation, as the case may be, as the Minister thinks fit.
- (3) The grant, variation or revocation of a permit or authority shall not be called in question on the ground that there has been a failure to comply with subsection (1) or (2) of this section in relation to the grant, variation or revocation, as the case may be.

**21 Effect of grant of permit or authority**

The grant to a person of a permit or authority does not make it lawful for the person to do any act or thing that, apart from this Act, is unlawful under another law of the Commonwealth or under a law of a State or Territory.

**22 Review of decisions**

- (1) Where:
  - (a) the Minister makes a decision refusing to grant a permit or a decision under subsection 18(1) refusing to grant an authority;
  - (b) a condition on the grant of a permit or of an authority under section 18 requires the approval or consent of a person specified in the permit or authority in respect of the doing of an act or thing and the person makes a decision refusing to give such an approval or consent;

- (c) the Minister makes a decision varying a permit or a decision under subsection 18(7) varying an authority;
  - (d) the Director makes a decision not to include, in a report in relation to an application for a permit or authority, a statement of the kind referred to in paragraph 14(a) or (b) or section 15 or in subsection 16A(1), 16B(1) or 18(2), as the case requires; or
  - (e) the Minister makes a decision under subsection 19(1) revoking a permit or authority;
- the person making the decision shall, not later than 30 days after the day on which the decision is made, give notice in writing of the decision and of the grounds for the decision to:
- (f) in a case to which paragraph (a) applies—the person who applied for the grant of the permit or authority;
  - (g) in a case to which paragraph (b) or (c) applies—the holder of the permit or authority;
  - (h) in a case to which paragraph (d) applies—the person who applied for the grant of the permit or authority; or
  - (j) in a case to which paragraph (e) applies—the holder of the permit or authority.
- (2) A notice referred to in subsection (1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* and to subsection (8) of this section, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.
  - (3) A failure to comply with the requirements of subsection (2) in relation to a decision shall not be taken to affect the validity of the decision.
  - (4) Subject to subsection (8), an application may be made to the Administrative Appeals Tribunal for review of:
    - (a) a decision of a kind referred to in subsection (1);
    - (b) a decision by the Minister imposing a condition or restriction on the grant of a permit;

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- (c) a decision by the Minister, pursuant to subsection 18(3), imposing a restriction or condition on the grant of an authority; or
  - (d) a decision by the Minister, pursuant to section 73, giving directions to be complied with by the holder of a permit or authority.
- (5) The Minister may certify, in writing, that in his or her opinion it is in the public interest that responsibility for a decision of a kind referred to in subsection (1) or in paragraph (4)(b), (c) or (d) (whether a decision of the Minister or of another person) that is specified in the certificate should reside solely with the Minister and that the decision should not be reviewable by the Administrative Appeals Tribunal.
- (6) Where the Minister issues a certificate under subsection (5), the Minister shall include in the certificate a statement of the grounds on which the certificate is issued.
- (7) Where the Minister issues a certificate under subsection (5) in relation to a decision, the Minister shall give notice in writing of the issuing of the certificate to:
  - (a) in a case where the decision is a decision of a kind referred to in subsection (1)—the person to whom notice of the making of the decision is required to be given in accordance with subsection (1); or
  - (b) in a case where the decision is a decision of a kind referred to in paragraph (4)(b), (c) or (d)—the holder of the permit or authority, as the case requires.
- (8) While a certificate under subsection (5) is in force in relation to a decision, subsection (4) does not apply in relation to the decision.
- (9) The Minister shall cause a copy of a certificate issued under subsection (5) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which a certificate is issued.



- (10) In this section, ***decision*** has the same meaning as it has in the *Administrative Appeals Tribunal Act 1975*.

## **Part III—Offences**

### **Division 1—General offences**

#### **23 Possession of nuclear material or associated item without permit**

- (1) Subject to section 24, a person who, without reasonable excuse:
  - (a) possesses nuclear material, or an associated item, to which Part II applies; and
  - (b) does not, at the time of the possession, hold a permit under section 13 or 16 that authorises the person to possess the material or item, as the case may be;commits an offence against this subsection punishable, upon conviction, by imprisonment for not more than 10 years.
- (2) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.
- (3) Subsection (2) shall not be read as derogating from the effect of the *Crimes at Sea Act 2000*.
- (4) Subsection (1) does not apply to the possession of associated technology by a Commonwealth officer or a prescribed authority of the Commonwealth in the course of:
  - (a) the collection, maintenance or assessment, on behalf of the Australian Government, of information relating to nuclear activities or to disarmament; or
  - (b) the giving of information or advice to the Australian Government in relation to nuclear activities or to disarmament.
- (5) Without limiting the generality of subsection (4), subsection (1) does not apply to the possession of nuclear material or an associated item by:
  - (a) the Director; or

- (b) an inspector or Agency inspector;  
in the course of the performance of a function or duty, or the  
exercise of a power, under this Act or the regulations.
- (6) Subsection (1) does not apply to the possession of associated  
technology by a Commonwealth officer in the course of:
  - (a) the performance of a function or duty, or the exercise of a  
power, under the *Patents Act 1990* or regulations under that  
Act; or
  - (b) the performance of duties in the Patent Office.

## **24 Special provisions for carriers**

- (1) Subsection 23(1) does not apply to the possession by a person of  
nuclear material or an associated item if:
  - (a) the person is in possession of the material or item solely in  
the capacity of a carrier for the purpose of transporting the  
material or item on behalf of another person; and
  - (b) the material or item is of a kind prescribed by the regulations  
for the purpose of this subsection.
- (2) Where it appears that:
  - (a) a person (in this section referred to as the **carrier**) was in  
possession of nuclear material or an associated item solely in  
the capacity of a carrier for the purpose of transporting the  
material or item on behalf of another person; and
  - (b) the carrier did not, at the time of the possession, hold a  
permit under section 13 or 16 that authorised the carrier to  
possess the material or item, as the case may be;the carrier does not commit an offence against section 23 by reason  
of possessing the material or item without such a permit unless it is  
proved that the carrier knew, at that time, that the material or item  
was nuclear material or an associated item, as the case requires.

## **25 Breach of condition of permit or authority etc.**

- (1) A person commits an offence if:

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- (a) the person engages in conduct; and
- (b) the conduct:
  - (i) contravenes a condition, or fails to observe a restriction, subject to which a permit or authority is granted; or
  - (ii) contravenes a direction given or an order made under section 73.

Penalty: Imprisonment for 2 years.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) In subsection (1):

***engage in conduct*** means:

- (a) do an act; or
  - (b) omit to perform an act.
- (2) Subsection (1) extends to a contravention or failure that occurs outside Australia.
- (3) Subsection (2) shall not be read as derogating from the effect of the *Crimes at Sea Act 2000*.

**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 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.

## **26 Unauthorised communication of information**

(1) Where:

- (a) a person, without reasonable excuse, communicates to another person information of a kind referred to in the definition of ***associated technology*** in subsection 4(1); and
- (b) the communication:
  - (i) is not required or authorised by this Act; and
  - (ii) is not made in accordance with an authority granted under section 18;

the first-mentioned person commits an offence against this subsection punishable, upon conviction, by imprisonment for not more than 10 years.

(2) Subsection (1) does not apply to the communication of information by a Commonwealth officer or a prescribed authority of the Commonwealth in the course of:

- (a) the collection, maintenance or assessment, on behalf of the Australian Government, of information relating to nuclear activities or to disarmament; or
- (b) the giving of information or advice to the Australian Government in relation to nuclear activities or to disarmament.

(3) Without limiting the generality of subsection (2), subsection (1) does not apply to the communication of information by:

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- (a) the Director; or
  - (b) an inspector or Agency inspector;in the course of the performance of a function or duty, or the exercise of a power, under this Act or the regulations.
- (4) Subsection (1) does not apply to the communication of information by a Commonwealth officer in the course of:
  - (a) the performance of a function or duty, or the exercise of a power, under the *Patents Act 1990* or regulations under that Act; or
  - (b) the performance of duties in the Patent Office.
- (4A) Subsection (1) does not apply to the communication of information that is in accordance with a prescribed international agreement.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the *Criminal Code*).
- (5) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.

**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 8 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 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.

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

- (1) A person shall, before:
- (a) processing or storing exempt nuclear material together with nuclear material to which Part II applies; or
  - (b) returning exempt nuclear material to use in nuclear activities;
- give notice in writing to the Minister of the proposed processing, storage or return to use in nuclear activities, as the case may be.
- (2) Where:
- (a) a person:
    - (i) processes or stores exempt nuclear material together with nuclear material to which Part II applies; or
    - (ii) returns exempt nuclear material to use in nuclear activities; and
  - (b) the person has not given the Minister notice, in accordance with subsection (1), of the proposed processing, storage or return to use in nuclear activities, as the case may be;
- the person commits an offence against this section punishable, upon conviction, by imprisonment for not more than 2 years.
- (3) In this section, ***exempt nuclear material*** means nuclear material that is, by virtue of a declaration under subsection 11(1), nuclear material to which Part II does not apply.

## **28 Interference with containment or surveillance devices**

A person who interferes with:

- (a) a containment device or surveillance device; or

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(b) the operation of a containment device or surveillance device; with the intention of adversely affecting the operation of the device commits an offence against this section punishable, upon conviction, by imprisonment for not more than 2 years.

**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).

**29 Information in relation to design for modification of nuclear facility**

- (1) A person shall, before commencing to carry out a significant modification of a nuclear facility, give notice in writing to the Director of the proposed modification.
- (2) Where a person commences to carry out a significant modification of a nuclear facility and at the time when the modification commences:
- (a) the person:



- (i) has not given the Director notice, in accordance with subsection (1), of the proposed modification; or
    - (ii) has not provided to the Director such information in relation to the design for the proposed modification as the Director, in writing, requests; or
  - (b) the prescribed period in relation to the modification has not elapsed since the information referred to in subparagraph (a)(ii) was provided to the Director;
- the person commits an offence against this subsection, punishable upon conviction by imprisonment for not more than 2 years.
- (3) Regulations made for the purposes of paragraph (2)(b):
    - (a) may prescribe different periods in relation to different classes of modification; and
    - (b) shall not prescribe a period greater than 6 months.
  - (4) For the purposes of this section, a modification of a nuclear facility shall be taken to be a significant modification of the facility if and only if the modification affects the implementation of the Australian safeguards system in relation to nuclear material or associated items located, or to be located, at the facility.

### **29A Decommissioning of facility without permit**

- (1) A person commits an offence if:
  - (a) the person causes work to be carried out to decommission the whole or a part of a facility described in paragraph 28A(1)(a); and
  - (b) 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).

### **30 False or misleading statements etc.**

- (1) A person who:

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- (a) makes to the Minister, the Director, an inspector, an Agency inspector or another person exercising a power, or performing a function or duty, in relation to this Act a statement, either orally or in writing, that is to the knowledge of the person false or misleading in a material particular; or
  - (b) presents to the Minister, the Director, an inspector, an Agency inspector or another person exercising a power, or performing a function or duty, in relation to this Act a book, document or other record that is to the knowledge of the person false or misleading in a material particular;
- commits an offence against this subsection punishable, upon conviction, by imprisonment for not more than 2 years.
- (2) Without limiting the generality of subsection (1), a reference in that subsection to the making of a statement or the presenting of a book, document or other record shall be read as including a reference to making a statement or presenting a book, document or other record pursuant to a condition of a permit or authority.
  - (3) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.

**31 Obstruction of Agency inspector**

- (1) A person who obstructs or hinders an Agency inspector in the performance of a duty or function, or the exercise of a power, under this Act or the regulations commits an offence against this subsection punishable, upon conviction, by imprisonment for not more than 2 years.
- (2) Nothing in subsection (1) shall be taken to affect the operation of section 147.1 or 149.1 of the *Criminal Code* to or in relation to the Director or an inspector.

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

- (1) A person commits an offence if:
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- (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 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.

## Division 2—Offences relating to the Physical Protection Convention

### 32 Definitions

In this Division:

*nuclear facility* has the same meaning as in the Physical Protection Convention.

*nuclear material* has the same meaning as in the Physical Protection Convention.

### 33 Stealing nuclear material

A person shall not:

- (a) steal;
  - (b) fraudulently misappropriate;
  - (c) fraudulently convert to that person's own use; or
  - (d) obtain by false pretences;
- any nuclear material.

Penalty: Imprisonment for 10 years.

### 34 Demanding nuclear material by threats etc.

A person shall not demand that another person give nuclear material to the first-mentioned person or some other person by force or threat of force or by any form of intimidation.

Penalty: Imprisonment for 10 years.

### 34A Carrying, sending or moving nuclear material

- (1) A person commits an offence if the person carries, sends or moves nuclear material into or out of Australia or a foreign country.

Penalty: Imprisonment for 10 years.

- (2) Subsection (1) does not apply if the carrying, sending or moving is done with lawful authority.

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

### **35 Use of nuclear material causing death or injury to persons or damage to property or the environment**

A person shall not use nuclear material to cause:

- (a) the death of, or serious injury to, any person; or
- (b) substantial damage to property or to the environment.

Penalty: Imprisonment for 20 years.

#### **35A Acts against nuclear facilities etc.**

A person commits an offence if:

- (a) the person does an act that is directed against a nuclear facility or that interferes with the operation of a nuclear facility; and
- (b) the person does so intending that the act will cause, or knowing that the act is likely to cause:
  - (i) the death of, or serious injury to, any person; or
  - (ii) substantial damage to property or to the environment; by exposure to radiation or by the release of radioactive substances.

Penalty: Imprisonment for 20 years.

### **36 Threat to use nuclear material**

A person shall not:

- (a) threaten;
- (b) state that it is his or her intention; or
- (c) make a statement from which it could reasonably be inferred that it is his or her intention;

to use nuclear material:

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- (d) to cause the death of, or injury to, any person; or
- (e) to cause damage to property or to the environment; or
- (f) to commit an offence against section 35A.

Penalty: Imprisonment for 10 years.

**37 Threat to commit offence**

A person shall not:

- (a) threaten;
- (b) state that it is his or her intention; or
- (c) make a statement from which it could reasonably be inferred that it is his or her intention;

to do any act that would be a contravention of section 33, or section 35A, in order to compel a person (including an international organisation or the Government of Australia or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 10 years.

**38 Extension of application of offence provisions**

- (1) Subject to subsection (2), this Division extends to an act or thing done outside Australia.
- (2) Proceedings against a person for an offence against a provision of this Division in respect of an act or thing done outside Australia (other than an act or thing to which subsection (3) applies) shall not be commenced unless:
  - (a) the person is present in Australia; and
  - (b) the following are satisfied:
    - (i) the act or thing was done in the territory of a foreign country that was, at the time when the act or thing was done, a State Party to the Physical Protection Convention;
    - (ii) the act or thing was done after the time when the Physical Protection Convention first required the

- foreign country to make the doing of the act or thing a punishable offence; and
- (c) the following are satisfied:
- (i) Australia was, at the time when the act or thing was done, a State Party to the Physical Protection Convention;
  - (ii) the act or thing was done after the time when the Physical Protection Convention first required Australia to make the doing of the act or thing a punishable offence; and
- (d) the person has not been prosecuted (whether in Australia or in a foreign country) in respect of the doing of the act or thing; and
- (e) Australia has not extradited the person to a foreign country in respect of the doing of the act or thing.
- (3) This subsection applies to an act or thing done outside Australia if the act or thing is done:
- (a) on an Australian ship or Australian aircraft; or
  - (b) in the course of international nuclear transport of nuclear material in a case where Australia is the State where the shipment originates or the State of ultimate destination; or
  - (c) by an Australian citizen; or
  - (d) by an individual who is a resident of Australia; or
  - (e) by a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.
- (4) Subsection (1) shall not be read as derogating from the effect of the *Crimes at Sea Act 2000*.
- (5) In subsection (3), ***international nuclear transport***, ***State where the shipment originates*** and ***State of ultimate destination*** have the same respective meanings as they have in the Physical Protection Convention.

## Division 2A—Offences relating to nuclear terrorism

### 38A ADF members not liable for prosecution

Nothing in this Division makes a member of the Australian Defence Force acting in connection with the defence or security of Australia liable to be prosecuted for an offence.

### 38B Definitions

In this Division:

**Convention device** has the same meaning as **device** has in the Nuclear Terrorism Convention.

**government facility** has the same meaning as **State or government facility** has in the Nuclear Terrorism Convention.

**nuclear facility** has the same meaning as in the Nuclear Terrorism Convention.

**radioactive material** has the same meaning as in the Nuclear Terrorism Convention.

### 38C Possessing radioactive material or Convention device, or making Convention device

*Possession of radioactive material or Convention device*

- (1) A person commits an offence if:
- (a) the person possesses material or a thing; and
  - (b) the material or thing is radioactive material or a Convention device; and
  - (c) the person intends to use the material or device, or to make it available to be used, to cause:
    - (i) the death of, or serious bodily injury to, an individual; or



- (ii) substantial damage to property or to the environment.

Penalty: Imprisonment for 20 years.

*Making a Convention device*

- (2) A person commits an offence if:
  - (a) the person makes a thing; and
  - (b) the thing is a Convention device; and
  - (c) the person intends to use the device, or to make it available to be used, to cause:
    - (i) the death of, or serious bodily injury to, an individual;  
or
    - (ii) substantial damage to property or to the environment.

Penalty: Imprisonment for 20 years.

**38D Using radioactive material, or using or damaging Convention device or nuclear facility**

*Using radioactive material*

- (1) A person commits an offence if:
  - (a) the person uses material; and
  - (b) the material is radioactive material; and
  - (c) the person intends the use of the material:
    - (i) to cause the death of, or serious bodily injury to, an individual; or
    - (ii) to cause substantial damage to property or to the environment; or
    - (iii) to compel a person or group of persons (including an international organisation or a legislative, executive or judicial institution of the Commonwealth, a State or a Territory, or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 20 years.

*Using or damaging Convention device*

- (2) A person commits an offence if:
- (a) the person uses or damages a thing; and
  - (b) the thing is a Convention device; and
  - (c) the person intends the use of, or damage to, the thing:
    - (i) to cause the death of, or serious bodily injury to, an individual; or
    - (ii) to cause substantial damage to property or to the environment; or
    - (iii) to compel a person or group of persons (including an international organisation or a legislative, executive or judicial institution of the Commonwealth, a State or a Territory, or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 20 years.

*Using or damaging nuclear facility*

- (3) A person commits an offence if:
- (a) the person uses or damages a facility; and
  - (b) the facility is a nuclear facility; and
  - (c) the use or damage causes radioactive material to be released, or creates a risk of radioactive material being released; and
  - (d) the person intends the use of, or damage to, the facility:
    - (i) to cause the death of, or serious bodily injury to, an individual; or
    - (ii) to cause substantial damage to property or to the environment; or
    - (iii) to compel a person or group of persons (including an international organisation or a legislative, executive or judicial institution of the Commonwealth, a State or a Territory, or of a foreign country) to do or refrain from doing any act or thing.

Penalty: Imprisonment for 20 years.

### **38E Threats and demands**

- (1) A person commits an offence if the person threatens to do an act that would be an offence against section 38D.

Penalty: Imprisonment for 20 years.

- (2) A person (the *offender*) commits an offence if:
- (a) the offender demands that another person:
    - (i) create material, a thing or a facility; or
    - (ii) allow the offender, or another person, access to, or control of, material, a thing or a facility; or
    - (iii) make material, a thing or a facility available to the offender or another person; and
  - (b) the material, thing or facility is (or would, if created, be) radioactive material, a Convention device or a nuclear facility; and
  - (c) the demand is made by force or threat of force, or by any form of intimidation.

Penalty: Imprisonment for 20 years.

### **38F Jurisdictional requirement**

A person commits an offence under this Division only if one or more of the following paragraphs applies:

- (a) the conduct constituting the alleged offence occurs:
  - (i) wholly or partly in Australia; or
  - (ii) wholly or partly on board an Australian ship or an Australian aircraft;
- (b) at the time of the alleged offence, the person is an Australian citizen;
- (c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;
- (d) the conduct is subject to the jurisdiction of another State Party to the Nuclear Terrorism Convention established in

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accordance with paragraph 1 or 2 of Article 9 of the Convention, and the person is in Australia;

- (e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;
- (f) the alleged offence is committed against:
  - (i) an Australian citizen; or
  - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
- (g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.

**Note:** A person commits an offence under this Division even if the conduct occurs in circumstances to which the Nuclear Terrorism Convention does not apply because of Article 3.

**38G Double jeopardy and foreign offences**

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Division in respect of that conduct.

**38H Attorney-General's consent needed to bring proceedings for offence under this Division**

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

**38J Evidentiary certificates**

- (1) The Foreign Affairs Minister may issue a certificate stating any of the following matters:

- (a) that the Nuclear Terrorism Convention entered into force for Australia on a specified day;
  - (b) that the Convention remains in force for Australia or any other State Party on a specified day;
  - (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 9 of the Convention.
- (2) The Immigration Minister may issue a certificate stating that:
  - (a) a person is or was an Australian citizen at a particular time;  
or
  - (b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.
- (3) In any proceedings for an offence under this Division, a certificate under this section is prima facie evidence of the matters in the certificate.

## Division 3—Miscellaneous

### 39 Forfeiture

- (1) Where a court:
  - (a) convicts a person of an offence against this Act; or
  - (b) makes an order under section 19B of the *Crimes Act 1914* in respect of a person charged with an offence against this Act;the court may order the forfeiture to the Commonwealth of any article used or otherwise involved in the commission of the offence.
- (2) Any article ordered by a court to be forfeited under this section becomes the property of the Commonwealth and may be sold or otherwise dealt with in accordance with the directions of the Minister and, pending the giving of such a direction by the Minister, the article shall be kept in such custody as the Minister directs.

### 40 Hearing in camera etc.

- (1) At any time before or during the hearing of proceedings before a court in relation to an offence against this Act, the Judge or Magistrate may, if satisfied that such a course is expedient in order to prevent the disclosure of information of a kind referred to in the definition of *associated technology* in subsection 4(1) or of information of a kind whose disclosure could prejudice the physical security of nuclear material or an associated item:
  - (a) order that some or all of the members of the public shall be excluded during the whole or a part of the proceedings;
  - (b) order that no report of the whole or a specified part of the proceedings shall be published; or
  - (c) make orders, and give directions, prohibiting or restricting access, either before, during or after the proceedings, to any affidavit, exhibit, information or other document used in the

proceedings that is on the file in the court or in the records of the court.

- (2) A person who contravenes an order made, or direction given, under subsection (1) commits an offence against that subsection punishable, upon conviction, by imprisonment for not more than 5 years.
- (3) Upon the termination of proceedings before a court in relation to an offence against this Act, any document containing information of a kind described in subsection (1) that would otherwise form part of the records of the court shall, as soon as practicable after the termination of those proceedings, be delivered into the possession and control of the Director.
- (4) In this section a reference to proceedings before a court shall be read as including a reference to committal proceedings in relation to an indictable offence.
- (5) For the purposes of this section, proceedings shall not be taken to have terminated until:
  - (a) in the case of proceedings other than committal proceedings in relation to an indictable offence—the time for bringing an appeal arising from those proceedings has expired or an appeal arising from those proceedings has been brought and has been determined; or
  - (b) in the case of committal proceedings in relation to an indictable offence—the trial in relation to the offence has been determined and the time for bringing an appeal arising from those proceedings has expired or an appeal arising from those proceedings has been brought and has been determined.

#### **41 Register of Permit and Authority Holders to be evidence of certain matters**

- (1) In a proceeding, the production of the Register, or of a document certified by the Director to be a true copy of the Register, is *prima facie* evidence:

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- (a) that a person whose name has been entered in the Register as a person to whom a relevant permit has been granted became the holder of that permit on the day entered in the Register as the day on which the grant of that permit took effect and:
    - (i) if there is entered in the Register the day on which the revocation, expiration or cessation of that permit took effect—continued to be the holder of that permit until the day so entered; or
    - (ii) in any other case—is the holder of that permit and has been the holder of that permit since that first-mentioned day;
  - (b) that a person is not the holder, and has never been the holder, of a relevant permit, if his or her name has not been entered in the Register as a person to whom a relevant permit has been granted; and
  - (c) that a person whose name has been entered in the Register as a person to whom a relevant permit of a particular kind has been granted was not the holder of a relevant permit of that kind on any day that is not included in:
    - (i) the relevant period applicable to that permit; or
    - (ii) if the name of the person has been entered in the Register as a person to whom 2 or more relevant permits of that kind have been granted—any of the relevant periods applicable to those permits.
- (2) The production in a proceeding of a document purporting to be a copy of the Register and to be certified by the Director to be a true copy is *prima facie* evidence that it is such a copy and that it has been so certified.
- (3) In this section:

***relevant permit*** means a permit or an authority under section 18.

***relevant period***, in relation to a relevant permit, means the period from and including the day entered in the Register as the day on which the permit took effect to and including the day immediately



preceding the day entered in the Register as the day on which the revocation, expiration or cessation of that permit took effect.

## **Part IV—Administration**

### **Division 1—Director of Safeguards**

#### **42 Director of Safeguards**

- (1) There shall be a Director of Safeguards.
- (2) The Director shall be appointed by the Governor-General.
- (3) The Director shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for reappointment.
- (5) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.
- (6) The Director may be referred to by another title specified by the Minister by notice in the *Gazette*.

#### **43 Functions of Director**

The functions of the Director are:

- (a) to ensure the effective operation of the Australian safeguards system;
- (b) to carry out, on behalf of Australia, the obligations that Australia has under the Agency Agreement, the Supplementary Agency Agreements and the prescribed international agreements to report in relation to the operation of the Australian safeguards system;
- (c) to monitor compliance with the provisions of the prescribed international agreements by parties other than Australia;
- (d) to undertake, co-ordinate and facilitate research and development in relation to nuclear safeguards;
- (e) to advise the Minister on matters relating to the operation of the Australian safeguards system;

- (f) to carry out such duties, and to exercise such powers, as are conferred on the Director by or under this Act or the regulations or any other law of the Commonwealth; and
- (g) to do anything incidental or conducive to the performance of any of the functions referred to in the preceding paragraphs.

#### **44 Directions of Minister**

The Director shall, in performing his or her functions and exercising his or her powers, comply with any directions given to him or her by the Minister.

#### **45 Remuneration and allowances**

- (1) The Director shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation the Director shall be paid such remuneration as is prescribed.
- (2) The Director shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **46 Leave of absence**

- (1) The Director has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

#### **47 Resignation**

The Director may resign from office by writing signed by the Director and delivered to the Governor-General.

## **48 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.
- (2) If the Director:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
  - (c) engages, except with the approval of the Minister, in paid employment outside the duties of the office of Director; or
  - (d) fails, without reasonable excuse, to comply with his or her obligations under section 49;the Governor-General shall terminate the appointment of the Director.

## **49 Disclosure of interests**

The Director shall give written notice to the Minister of all direct or indirect pecuniary interests that the Director has or acquires in any business whether in Australia or elsewhere or in any body corporate carrying on any such business.

## **50 Acting Director**

The Minister may appoint a person to act as Director:

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Director is absent from Australia or is, for any reason, unable to perform the duties of the office of Director.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## 51 Annual report by Director

- (1) The Director shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report in relation to the operations of the Director during that year.
- (2) A report shall include the following information in respect of the period to which the report relates:
  - (a) for all nuclear material and associated items of Australian origin transferred from Australia to any foreign jurisdiction or between foreign jurisdictions:
    - (i) the total quantities in each stage of the nuclear fuel cycle; and
    - (ii) the intended end-use; of the nuclear material and the items transferred to each jurisdiction;
  - (b) the quantities, categories and intended end-use of all nuclear material and associated items within Australia; and
  - (c) any unreconciled differences in quantities of:
    - (i) nuclear material of Australian origin, wherever situated; or
    - (ii) nuclear material within Australia, regardless of origin; and an explanation of those differences.
- (3) In subsection (2), **foreign jurisdiction** means a foreign country or the European Atomic Energy Community.
- (4) The Minister shall cause a copy of a report furnished to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

## 52 Additional reports

The Director:

- (a) shall furnish to the Minister such reports or information in relation to the operations of the Director as the Minister requires; and

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- (b) may furnish to the Minister such other reports or information in relation to the operations of the Director as the Director considers appropriate.

**53 Delegation by Director**

- (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Director, delegate to an inspector or a member of the staff referred to in section 55 all or any of the Director's powers under this Act or the regulations, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Director.
- (3) A delegation under this section does not prevent the exercise of a power by the Director.

## **Division 2—Australian Safeguards Office**

### **54 Australian Safeguards Office**

- (1) There is hereby established an Office to be known as the Australian Safeguards Office.
- (2) The Australian Safeguards Office shall consist of the Director and the staff referred to in section 55.
- (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).

### **55 Staff**

The staff required to assist the Director in carrying out or giving effect to the provisions of this Act shall be persons engaged under the *Public Service Act 1999*.

### **56 Engagements of consultants etc.**

- (1) The Director may, on behalf of the Commonwealth and with the approval of the Minister or a person authorised in writing by the Minister for the purpose, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to the Director.
- (2) The terms and conditions of engagement of a person engaged by the Director under subsection (1) are such as are determined by the Director.

## Division 3—Inspectors and Agency inspectors

### 57 Inspectors and Agency inspectors

- (1) The Minister may, in writing, appoint a person as an inspector for the purposes of this Act.
- (2) Where the Minister is satisfied that a person has, in accordance with the Agency Agreement or a Supplementary Agency Agreement, been designated by the Agency as an Agency inspector to Australia, the Minister shall, in writing, declare the person to be an Agency inspector for the purposes of this Act.
- (3) Where the Minister declares a person to be an Agency inspector for the purposes of this Act, the Minister shall give the person a copy of the declaration.
- (4) The Minister may, in the Minister's discretion:
  - (a) determine terms and conditions of appointment, including remuneration and allowances, of a person appointed under subsection (1); and
  - (b) at any time terminate such an appointment.

### 58 Identity cards

- (1) The Director may issue to an inspector an identity card in a form approved by the Director.
- (2) Where a person in possession of an identity card issued to the person under subsection (1) ceases to be an inspector, the person shall forthwith return the identity card to the Director or a person nominated by the Director.

Penalty: 1 penalty unit.

- (3) An offence under subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



## **Division 4—Inspections, searches and seizures**

### **59 Safeguards inspections by inspectors**

- (1) A reference in this section to a relevant safeguards purpose shall be read as a reference to the purpose of:
- (a) ascertaining whether the provisions of this Act and the regulations have been or are being complied with; or
  - (b) ascertaining whether the restrictions and conditions applicable to a permit or authority have been or are being complied with by the person to whom the permit or authority was granted; or
  - (c) ascertaining whether orders made and directions given under section 73 have been or are being complied with; or
  - (d) ensuring the proper functioning of containment devices and surveillance devices; or
  - (e) facilitating an inspection by an Agency inspector in accordance with the Agency Agreement or a Supplementary Agency Agreement; or
  - (f) ascertaining whether the construction of a facility described in paragraph 28A(1)(a) has been or is being carried out in accordance with information provided to the Director under this Act in relation to the construction; or
  - (fa) ascertaining whether the modification of a nuclear facility has been or is being carried out in accordance with information provided to the Director under section 29 in relation to the modification; or
  - (fb) ascertaining whether the decommissioning of a facility described in paragraph 28A(1)(a) has been or is being carried out in accordance with information provided to the Director under this Act in relation to the decommissioning; or
  - (g) doing any act or thing authorised by an authority given pursuant to paragraph 67(1)(d) or 68(1)(e).
- (2) A reference in this section to a relevant power shall be read as a reference to a power to:
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- (a) search land or premises or a vessel, aircraft or vehicle;
  - (b) inspect or examine a matter or thing;
  - (c) take samples of a matter or thing;
  - (d) examine a document (including a record kept pursuant to this Act or the regulations, pursuant to a condition of a permit or authority or pursuant to an order or direction under section 73);
  - (e) take extracts from, or make copies of, a document (including a record of the kind referred to in paragraph (d));
  - (f) measure any quantity of nuclear material or associated material;
  - (g) verify the proper functioning or calibration of an instrument (including an instrument that forms part of a containment device or surveillance device);
  - (h) install or operate a containment device or surveillance device; or
  - (j) do any other act or thing necessary or convenient to be done in order to achieve a relevant safeguards purpose.
- (3) An inspector may:
- (a) with the consent of the occupier of any land or premises;
  - (b) in accordance with an agreement, whether oral or in writing, between the Director and the occupier of any land or premises; or
  - (c) pursuant to a warrant issued under subsection (6) in respect of any land or premises;
- enter upon the land, or upon or into the premises, and exercise any relevant power for a relevant safeguards purpose.
- (4) An inspector may:
- (a) with the consent of the person in control of any vessel, aircraft or vehicle; or
  - (b) pursuant to a warrant issued under subsection (6) in respect of any vessel, aircraft or vehicle;
- enter the vessel, aircraft or vehicle and exercise any relevant power for a relevant safeguards purpose.

- (5) Where an inspector may enter a vessel, aircraft or vehicle under subsection (4), the inspector may, for that purpose and for the purpose of exercising a relevant power for a relevant safeguards purpose, stop and detain the vessel, aircraft or vehicle.
- (6) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for an inspector having access to any land, premises, vessel, aircraft or vehicle, in order to exercise relevant powers in relation to the land, premises, vessel, aircraft or vehicle for relevant safeguards purposes, and the information sets out those grounds, the Magistrate may issue a warrant authorising an inspector named in the warrant, with such assistance as the inspector thinks necessary, and if necessary by force:
  - (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle; and
  - (b) to exercise relevant powers in relation to the land, premises, vessel, aircraft or vehicle, as the case requires, for relevant safeguards purposes specified in the warrant.
- (7) A Magistrate shall not issue a warrant under subsection (6) unless:
  - (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (8) There shall be stated in a warrant issued under subsection (6):
  - (a) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (b) a day, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

## **60 Safeguards inspections by Agency inspectors**

- (1) A reference in this section to a relevant power shall be read as a reference to a power to:

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- (a) inspect or examine a matter or thing;
  - (b) take samples of a matter or thing;
  - (c) examine a document (including a record kept pursuant to this Act or the regulations, pursuant to a condition of a permit or authority or pursuant to an order or direction under section 73);
  - (d) take extracts from, or make copies of, a document (including a record of the kind referred to in paragraph (c));
  - (e) measure any quantity of nuclear material;
  - (f) verify the proper functioning or calibration of an instrument (including an instrument that forms part of a containment device or surveillance device);
  - (g) install or operate a containment device or surveillance device; or
  - (h) do any other act or thing necessary or appropriate to be done in order to carry out an inspection that the Agency has the right to make in accordance with the Agency Agreement or a Supplementary Agency Agreement.
- (2) For the purposes of carrying out an inspection that the Agency has the right to make in accordance with the Agency Agreement or a Supplementary Agency Agreement, an Agency inspector may:
  - (a) with the consent of the occupier of any land or premises; or
  - (b) in accordance with an agreement, whether oral or in writing between the Director and the occupier of any land or premises;enter upon the land, or upon or into the premises, and exercise any relevant power.
- (2A) For the purposes of carrying out an inspection that the Agency has the right to make in accordance with the Agency Agreement or a Supplementary Agency Agreement, an Agency inspector may, with the consent of the person in control of any vessel, aircraft or vehicle, enter the vessel, aircraft or vehicle and exercise any relevant power.
- (3) Where:

- (a) a warrant is issued to an inspector (in this subsection referred to as the **relevant inspector**) under subsection 59(6) authorising the exercise of powers in relation to land or premises or a vessel, aircraft or vehicle for specified relevant purposes; and
- (b) those purposes include the purpose of facilitating an inspection by an Agency inspector in accordance with the Agency Agreement or a Supplementary Agency Agreement; an Agency inspector may accompany the relevant inspector when the relevant inspector enters upon the land or upon or into the premises, vessel, aircraft or vehicle and may, for the purposes of carrying out the inspection referred to in paragraph (b), exercise any relevant power.

## **61 Offence-related searches and seizures**

- (1) Where an inspector has reasonable grounds for suspecting that there may be on any land or premises any article or thing that may afford evidence as to the commission of an offence against this Act, the inspector may:
  - (a) with the consent of the occupier of the land or premises;
  - (b) pursuant to a warrant issued under subsection (4); or
  - (c) pursuant to section 63;enter upon the land, or upon or into the premises, and:
  - (d) search the land or premises for any such article or thing; and
  - (e) seize any such article or thing found upon the land or upon or in the premises.
- (2) Where an inspector has reasonable grounds for suspecting that there is in any vessel, aircraft or vehicle any article or thing that may afford evidence as to the commission of an offence against this Act, the inspector may:
  - (a) with the consent of the person in control of the vessel, aircraft or vehicle;
  - (b) pursuant to a warrant issued under subsection (4); or
  - (c) pursuant to section 63;enter the vessel, aircraft or vehicle and:

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- (d) search the vessel, aircraft or vehicle for any such article or thing; and
  - (e) seize any such article or thing found in the vessel, aircraft or vehicle.
- (3) Where an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(d) or (e), stop and detain the vessel, aircraft or vehicle.
- (4) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any land or upon or in any premises, vessel, aircraft or vehicle, any article or thing that may afford evidence as to the commission of an offence against this Act and the information sets out those grounds, the Magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance as the inspector thinks necessary, and if necessary by force:
  - (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
  - (b) to search the land, premises, vessel, aircraft or vehicle for any such article or thing; and
  - (c) to seize any article or thing that the inspector:
    - (i) finds upon the land or upon or in the premises, vessel, aircraft or vehicle; and
    - (ii) believes on reasonable grounds may be an article or thing connected with that offence.
- (5) A Magistrate shall not issue a warrant under subsection (4) unless:
  - (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (6) There shall be stated in a warrant issued under subsection (4):

- (a) the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry and search are authorised;
  - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
  - (c) a description of the kind of documents, substances, equipment or things to be seized; and
  - (d) a day, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.
- (7) Where an inspector seizes any article or thing pursuant to subsection (1) or (2), the inspector may retain the article or thing until the expiration of a period of 60 days after the seizure or, if proceedings for an offence against this Act in respect of which the article or thing may afford evidence are instituted within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are terminated.
- (8) The Director may authorise any article or thing seized under subsection (1) or (2) to be released to the owner, or to the person from whom the article or thing was seized, either unconditionally or on such conditions as the Director thinks fit, including conditions as to the giving of security for payment of the value of the article or thing if it is forfeited under section 39.

## **62 Warrants may be granted by telephone**

- (1) Where, by reason of circumstances of urgency, an inspector considers it necessary to do so, the inspector may make an application for a warrant under subsection 61(4), by telephone, in accordance with this section.
- (2) Before so making application, an inspector shall prepare an information of a kind referred to in subsection 61(4) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

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- (3) Where a Magistrate to whom an application under subsection (1) is made is satisfied:
- (a) after having considered the terms of the information prepared in accordance with subsection (2); and
  - (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;
- that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 61 if the application has been made in accordance with that section.
- (4) Where a Magistrate signs a warrant under subsection (3):
- (a) the Magistrate shall inform the inspector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for the granting of the warrant; and
  - (b) the inspector shall complete a form of warrant in the terms furnished to the inspector by the Magistrate and write on it the name of the Magistrate and the date on which and the time at which the warrant was signed.
- (5) Where an inspector completes a form of warrant in accordance with subsection (4), the inspector shall, not later than the day next following the date of expiry of the warrant, forward to the Magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.
- (6) Upon receipt of the documents referred to in subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 61.
- (7) A form of warrant duly completed by an inspector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any entry, search,



seizure or other exercise of a power that the warrant so signed authorises.

- (8) Where it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the entry, search, seizure or other exercise of power is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

### **63 Emergency searches and seizures**

- (1) Subject to subsection (3), where an inspector believes on reasonable grounds that:
- (a) there is situated upon any land, or upon or in any premises, vessel, aircraft or vehicle any article or thing that the inspector believes on reasonable grounds will afford evidence of the commission of an offence against this Act; and
  - (b) the exercise of powers under this section is necessary to prevent the concealment, loss or destruction of the article or thing;
- the inspector may, with such assistance as the inspector thinks fit, and if necessary by force:
- (c) enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
  - (d) search for the article or thing; and
  - (e) seize the article or thing.
- (2) Where an inspector may enter a vessel, aircraft or vehicle under subsection (1), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (1)(d) or (e), stop and detain the vessel, aircraft or vehicle.
- (3) An inspector shall not exercise powers under subsection (1) unless the power is exercised in circumstances of such seriousness and

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urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under section 61.

- (4) The reference in subsection (3) to a warrant issued under section 61 includes a reference to such a warrant issued in accordance with section 62.
- (5) Where an inspector seizes any article or thing pursuant to subsection (1), the inspector may retain the article or thing until the expiration of a period of 60 days after the seizure or, if proceedings for an offence against this Act in respect of which the article or thing may afford evidence are instituted within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are terminated.
- (6) The Director may authorise any article or thing, seized under subsection (1) to be released to the owner, or to the person from whom the article or thing was seized, either unconditionally or on such conditions as the Director thinks fit, including conditions as to the giving of security for payment of the value of the article or thing if it is forfeited under section 39.

**64 Inspectors and Agency inspectors to produce evidence of identity**

- (1) Where an inspector exercises a power under section 59, 61 or 63 (otherwise than pursuant to a warrant) in relation to:
  - (a) land or premises;
  - (b) a vessel, aircraft or vehicle; or
  - (c) an article or thing;the inspector shall forthwith produce the inspector's identity card for inspection by the person (if any) who is in charge of the land, premises, vessel, aircraft or vehicle or in possession of the article or thing and, if the inspector fails to do so, the inspector ceases to be authorised to exercise that power.
- (2) Where an Agency inspector exercises a power under section 60 in relation to land or premises, the Agency inspector shall forthwith produce for inspection by the person (if any) who is in charge of the land or premises, a copy of the declaration made, pursuant to

subsection 57(2), in respect of the Agency inspector and, if the Agency inspector fails to do so, the Agency inspector ceases to be authorised to exercise that power.

## **65 Persons to assist inspectors**

- (1) Subject to subsection (2), where an inspector has entered upon any land or upon or into any premises, vessel, aircraft or vehicle under section 59, 61 or 63, the occupier of the land or premises or the person in control of the vessel, aircraft or vehicle, as the case requires, shall, if requested by the inspector to do so, provide reasonable assistance to the inspector for the purposes of the exercise of the inspector's powers under that section in respect of the land, premises, vessel, aircraft or vehicle, as the case requires.

Penalty: Imprisonment for 6 months.

- (2) Where an inspector makes a request of a person under subsection (1), the inspector shall produce the inspector's identity card for inspection by the person and, if the inspector fails to do so, the person is not obliged to comply with the request.

## **66 Inspector may require information etc.**

- (1) An inspector may request a person whom the inspector finds committing, or whom the inspector suspects on reasonable grounds of having committed, an offence against this Act to state that person's full name and usual place of residence.
- (2) An inspector may request a person whom the inspector finds doing, or suspects on reasonable grounds of having done, an act of a kind in respect of which a person is required to hold a permit or authority under this Act to produce such a permit or authority or evidence of the existence and contents of such a permit or authority.
- (3) Where an inspector makes a request of a person under subsection (1) or (2), the inspector shall produce the inspector's

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identity card for inspection by the person and, if the inspector fails to do so, the person is not obliged to comply with the request.

- (4) Subject to subsection (3), a person who, without reasonable excuse, fails to comply with a request made of the person by an inspector under subsection (1) or (2) commits an offence against this section punishable, on conviction, by a fine not exceeding 10 penalty units.
- (5) An offence under subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**67 Seizure of nuclear material etc. where required by prescribed international agreement**

- (1) Where:
  - (a) a person (in this section referred to as the *relevant person*) has possession of nuclear material or an associated item; and
  - (b) Australia is, pursuant to a prescribed international agreement with another country (in this section referred to as the *relevant country*), under an obligation to return or transfer the material or item to the relevant country;the Director may:
  - (c) seize the material or item on behalf of the Commonwealth and arrange for the material or item to be dealt with in accordance with the prescribed agreement; or
  - (d) authorise an inspector, in writing, to seize the material or item on behalf of the Commonwealth and to arrange for the material or item to be dealt with in accordance with the prescribed agreement.
- (2) Where the Director gives an authority to an inspector under subsection (1), the inspector may, subject to subsection (3), exercise the powers conferred by the authority.
- (3) Where an inspector exercises a power pursuant to an authority under subsection (1), the inspector shall forthwith produce the inspector's identity card for inspection by the relevant person and,

if the inspector fails to do so, the inspector ceases to be authorised to exercise that power.

- (4) Where the Director or an inspector seizes nuclear material or an associated item under subsection (1) or (2), the Director shall, within 7 days after the seizure of the material or item, give notice in writing to the relevant person that the Director proposes to return or transfer the material or item to the relevant country.
- (5) A notice under subsection (4) shall include:
- (a) a statement of the grounds on which the material or item has been seized (including, without limiting the generality of the foregoing, a reference to the prescribed international agreement in reliance on which the material or item has been seized);
  - (b) a statement that the relevant person may, within 14 days after receiving the notice, apply to the Minister, in writing, for the return to the relevant person of the material or item; and
  - (c) a summary of the procedures applicable under subsections (7) and (8).
- (6) Where nuclear material or an associated item is seized under subsection (1) or (2) and notice is not given to the relevant person in accordance with subsections (4) and (5), the Director shall, if so requested by the relevant person, return the material or item to the relevant person.
- (7) Where:
- (a) the period of 14 days referred to in paragraph (5)(b) expires without the relevant person having applied to the Minister, in writing, for return of the material or item; or
  - (b) the relevant person applies to the Minister, in writing, within that period of 14 days for return of the material or item and the Minister rejects the application;
- the Minister may, in writing, authorise the return or transfer of the material or item to the relevant country in accordance with the prescribed agreement and, where the Minister does so, property in the material or item thereupon vests in the Commonwealth.

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- (8) Where, but for this subsection, the operation of this section would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed upon between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court of Australia.
- (9) In subsection (8), *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

## **Division 5—Miscellaneous**

### **68 Compliance with conditions etc.**

- (1) Where a person (in this section referred to as the *relevant person*) does not comply with:
  - (a) a restriction or condition to which a permit or authority granted to the relevant person is subject;
  - (b) an order made under section 73; or
  - (c) a direction given to the relevant person under section 73;the Director may:
  - (d) do all or any of the things required to be done for compliance with the restriction, condition, order or direction, as the case may be; or
  - (e) authorise an inspector, in writing, to do all or any of the things required for compliance with the restriction, condition, order or direction, as the case may be.
- (2) Where the Director gives an authority to an inspector under subsection (1), the inspector may, subject to subsection (3), exercise a power conferred by the authority.
- (3) Where it is necessary for an inspector, in order to exercise a power conferred by an authority under subsection (1), to:
  - (a) enter upon land, or upon or into premises; or
  - (b) enter a vessel, aircraft or vehicle;and to exercise relevant powers (within the meaning of section 59), the entry and the exercise of those powers shall be effected in accordance with section 59.
- (4) Costs and expenses incurred by the Director or an inspector under subsection (1) are a debt due by the relevant person to the Commonwealth and are recoverable in a court of competent jurisdiction.

**69 Register of Permit and Authority Holders to be kept**

- (1) The Director shall cause to be kept for the purposes of this Act a register to be known as the Register of Permit and Authority Holders and shall cause to be entered in the Register:
  - (b) the names of persons to whom permits are granted; and
  - (c) the names of persons to whom authorities under section 18 are granted.
- (2) Where a person is granted a permit or authority, the Director shall forthwith cause particulars of the grant (including particulars of the day on which the grant takes effect) to be entered in the Register.
- (3) Where a permit granted to a person or an authority granted to a person under section 18 is revoked, expires or otherwise ceases to have effect, the Director shall forthwith cause particulars of the revocation, expiration or cessation (including particulars of the day on which the revocation, expiration or cessation takes effect) to be entered in the Register.
- (4) The Register shall be kept in such form as the Minister directs.
- (5) The Director may correct clerical errors in the Register.



## **Part IVA—Charges**

### **69A Charge—producers of uranium ore concentrates**

- (1) The charge imposed by section 3 of the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* on a person who on 1 November in a financial year holds a permit granted under paragraph 13(1)(a) is payable by the person on 1 December in the financial year.
- (2) The amount of charge payable is:
  - (a) \$500,000; or
  - (b) if the regulations provide for the payment of a lesser amount prescribed by, or ascertained under, the regulations—that lesser amount.

### **69B Extension of time to pay**

- (1) If a charge is payable by a person under section 69A, the Director may, if he or she thinks it reasonable in the circumstances, determine in writing that the charge may be paid on a day later than 1 December.
- (2) If the Director makes a determination under subsection (1), the charge is payable on that later day.

### **69C Payment by instalments**

- (1) If a charge is payable by a person under section 69A, the Director may, if he or she thinks it reasonable in the circumstances, determine in writing that the charge may be paid by instalments.
- (2) Instalments are payable on the days, and in the amounts, specified in, or ascertained under, the determination.

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- (3) If an instalment has not been paid on the day on which it is payable, the amount of charge outstanding becomes payable immediately.

## **Part V—Miscellaneous**

### **70 Powers to be exercised in accordance with international agreements**

- (1) Where this Act confers a power, discretion, duty or function on a person, the exercise of the power or discretion or the performance of the duty or function is authorised by this Act only to the extent that the exercise or performance is not inconsistent with Australia's obligations under the relevant international agreements.
- (2) Where this Act confers a power or discretion on a person, the person shall have regard to Australia's obligations under the relevant international agreements in exercising that power or discretion.
- (3) A reference in this section to a relevant international agreement is a reference to an agreement that is, by virtue of subsection (4) or (5), a relevant international agreement for the purposes of this section.
- (4) The Non-Proliferation Treaty, the Agency Agreement, the Supplementary Agency Agreements and the prescribed international agreements are relevant international agreements for the purposes of this section.
- (5) The Physical Protection Convention is a relevant international agreement for the purposes of this section.

### **71 Reports etc. to be confidential**

- (1) This section applies to a person who is or has been:
  - (a) the Director;
  - (b) an inspector;
  - (c) a member of staff referred to in section 55;
  - (d) a person engaged under section 56; or
  - (e) an employee of a person engaged under section 56.

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- (2) A person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act or for the purposes of an international agreement:
- (a) produce to any person a document:
    - (i) given to the Director or to an inspector pursuant to a condition of a permit or authority or pursuant to an order or direction under section 73;
    - (ii) given to the Australian Government, the Director or an inspector pursuant to an international agreement under which the document is to be treated as confidential; or
    - (iii) given to the Australian Government, the Director or an inspector by or on behalf of the government of a foreign country with the stipulation that the document is to be treated as confidential;
  - (b) make a record of, or divulge or communicate to any person, the contents of a document referred to in paragraph (a); or
  - (c) make a record of, or divulge or communicate to any person, any information:
    - (i) given to the Director or an inspector pursuant to a condition of a permit or authority or pursuant to an order or direction under section 73; or
    - (ii) given to the Australian Government, the Director or an inspector pursuant to an international agreement under which the information is to be treated as confidential.

Penalty: Imprisonment for 2 years.

**72 Delegation by Minister**

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to the Director or an officer of the Department all or any of the Minister's powers under this Act or the regulations, other than:
- (a) this power of delegation; and
  - (b) the Minister's power under subsection 22(5).

- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power by the Minister.
- (4) Without limiting the generality of subsection (1), the Minister may delegate to the Director the Minister's power to grant permits or to grant authorities under section 18.
- (5) If the Minister delegates to the Director the Minister's power to grant permits, the following provisions have effect:
  - (a) section 12 applies in relation to any application for a permit that is dealt with by the Director pursuant to the delegation as if paragraph 12(2)(b) and subsection 12(3) were omitted;
  - (b) sections 14 and 15 do not apply in relation to any application for a permit that is dealt with by the Director pursuant to the delegation but the Director:
    - (i) shall not grant a permit under section 13 to the owner or operator of a nuclear facility unless the Director is satisfied that:
      - (A) the person applying for the grant of the permit has provided the Director with all information that the Director has required the person to provide in relation to the application pursuant to paragraph 12(2)(a);
      - (B) appropriate procedures can be applied at the facility for the implementation of the Australian safeguards system in relation to nuclear material and associated items to be located at the facility; and
      - (C) adequate physical security can be applied to nuclear material and associated items at the facility;
    - (ii) shall not grant a permit under section 13 in relation to nuclear material or an associated item that is to be held otherwise than at a nuclear facility unless the Director is

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- satisfied that the person applying for the grant of the permit has provided the Director with all information that the Director has required the person to provide in relation to the application pursuant to paragraph 12(2)(a);
- (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);
  - (d) subsection 16B(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 16B(1)(a), (b) and (c).
- (6) If the Minister delegates to the Director the Minister's power to grant authorities under section 18, the following provisions have effect:
- (a) section 17 applies in relation to any application for an authority that is dealt with by the Director pursuant to the delegation as if paragraph 17(2)(b) and subsection 17(3) were omitted;
  - (b) subsection 18(2) does not apply in relation to an application for an authority that is dealt with by the Director pursuant to the delegation but the Director shall not grant an authority unless the Director is satisfied that the person applying for the grant of the authority has provided the Director with all information that the Director has required the person to provide in relation to the application pursuant to paragraph 17(2)(a).

### 73 Orders and directions

- (1) The Minister:
  - (a) may, by legislative instrument, make orders, not inconsistent with this Act or the regulations, to be complied with by the holders of permits or authorities; and

- (b) may, in writing, give directions, not inconsistent with this Act or the regulations, to be complied with by the holder of a permit or authority.
- (2) Without limiting the generality of subsection (1), orders made under this section, and directions given under this section, may make provision with respect to:
- (a) in the case of a permit granted under section 13—any matter referred to in paragraph 13(3)(a) or (c) to (o) (inclusive); and
  - (b) in the case of a permit granted under section 16—any matter referred to in paragraph 16(3)(b) to (e) (inclusive); and
  - (ba) in the case of a permit granted under section 16A—any matter referred to in paragraph 16A(3)(a), (b) or (c); and
  - (bb) in the case of a permit granted under section 16B—any matter referred to in paragraph 16B(3)(a) or (b); and
  - (c) in the case of an authority granted under section 18—any matter referred to in paragraph 18(4)(a), (b) or (d).
- (3) Where a direction given under this section is inconsistent with an order made under this section, the direction shall prevail and the order shall, to the extent of the inconsistency, be of no effect.
- (7) A direction given under subsection (1) to the holder of a permit or authority shall have endorsed on it or attached to it a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* and to subsection 22(8) of this Act, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by a decision of the Minister, pursuant to subsection (1) of this section, giving a direction to be complied with by the holder of the permit or authority, for review of the decision.
- (8) A failure to comply with the requirements of subsection (7) in relation to a decision shall not be taken to affect the validity of the decision.
- (9) Where a notice setting out the terms of directions given under this section to the holder of a permit or authority is served, personally or by post, telegram or telex, on the holder of the permit or
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authority, the directions shall, for the purposes of subsection (1), be deemed to have been given to the holder of the permit or authority.

**74 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, making provision for, or with respect to:

- (c) the imposition of penalties, not exceeding a fine of 10 penalty units, for offences against the regulations;
- (d) the making of reports by persons to whom permits are granted;
- (e) the form of reports to be made or information to be given under this Act or pursuant to conditions subject to which permits or authorities are granted;
- (f) standards for the physical security to be applied with respect to nuclear material and associated items to which Part II applies;
- (g) the keeping of accounting and operating records in relation to nuclear material and associated items by persons to whom permits are granted and the period for which such records are to be retained; or
- (h) systems of measurement.



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## **Schedule 1—Article XX of the Statute of the International Atomic Energy Agency**

Section 4

### **Article XX**

#### **Definitions**

As used in this Statute:

1. The term “special fissionable material” means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term “special fissionable material” does not include source material.
2. The term “uranium enriched in the isotopes 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.
3. The term ***source material*** means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other material as the Board of Governors shall from time to time determine.

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## Schedule 2—Treaty on the Non-Proliferation of Nuclear Weapons

### Section 4

The States concluding this Treaty, hereinafter referred to as the “Parties to the Treaty”,

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to co-operate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in co-operation with other States to, the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the co-operation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water

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in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Have agreed as follows:

#### **Article I**

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

#### **Article II**

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

#### **Article III**

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures

for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.

3. The safeguards required by this Article shall be implemented in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this Article and the principle of safeguarding set forth in the Preamble of the Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this Article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

#### **Article IV**

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy.

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Parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

#### **Article V**

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

#### **Article VI**

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

#### **Article VII**

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

#### **Article VIII**

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

#### **Article IX**

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

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5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

#### **Article X**

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

#### **Article XI**

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

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## **Schedule 3—Agreement between Australia and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons**

### Section 4

WHEREAS Australia is a Party to the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as “the Treaty”) opened for signature at London, Moscow and Washington on 1 July 1968 and which entered into force on 5 March 1970;

WHEREAS paragraph 1 of Article III of the Treaty reads as follows:

“Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency’s safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere”;

RECALLING that pursuant to paragraph 1 of Article IV of the Treaty nothing in the Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and the use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of the Treaty;



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RECALLING that according to paragraph 2 of Article IV of the Treaty all the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy;

WHEREAS it is the desire of Australia and the International Atomic Energy Agency (hereinafter referred to as “the Agency”) to avoid unnecessary duplication with regard to Australia’s accounting and control activities;

WHEREAS the Board of Governors of the Agency (hereinafter referred to as “the Board”) has approved a comprehensive set of model provisions for the structure and contents of agreements between the Agency and States required in connection with the Treaty to be used as the basis for negotiating safeguards agreements between the Agency and non-nuclear-weapon States Party to the Treaty;

WHEREAS the Agency is authorized, pursuant to Article III of its Statute, to conclude such agreements;

NOW THEREFORE Australia and the Agency have agreed as follows:

## **PART I**

### **BASIC UNDERTAKING**

#### **Article 1**

Australia undertakes, pursuant to paragraph 1 of Article III of the Treaty, to accept safeguards, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

### **APPLICATION OF SAFEGUARDS**

#### **Article 2**

The Agency shall have the right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within the territory of Australia, under its jurisdiction or carried out under its control anywhere, for

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the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

#### CO-OPERATION BETWEEN AUSTRALIA AND THE AGENCY

##### **Article 3**

Australia and the Agency shall co-operate to facilitate the implementation of the safeguards provided for in this Agreement.

#### IMPLEMENTATION OF SAFEGUARDS

##### **Article 4**

The safeguards provided for in this Agreement shall be implemented in a manner designed:

- (a) To avoid hampering the economic and technological development of Australia or international co-operation in the field of peaceful nuclear activities, including international exchange of nuclear material;
- (b) To avoid undue interference in Australia's peaceful nuclear activities, and in particular in the operation of facilities; and
- (c) To be consistent with prudent management practices required for the economic and safe conduct of nuclear activities.

##### **Article 5**

- (a) The Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement.
- (b) (i) The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of this Agreement, except that specific information relating to the implementation thereof may be given to the Board and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its responsibilities in implementing this Agreement.
- (ii) Summarized information on nuclear material subject to safeguards under this Agreement may be published upon decision of the Board if Australia agrees thereto.

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**Article 6**

- (a) The Agency shall, in implementing safeguards pursuant to this Agreement, take full account of technological developments in the field of safeguards, and shall make every effort to ensure optimum cost-effectiveness and the application of the principle of safeguarding effectively the flow of nuclear material subject to safeguard under this Agreement by use of instruments and other techniques at certain strategic points to the extent that present or future technology permits.
- (b) In order to ensure optimum cost-effectiveness, use shall be made, for example, of such means as:
  - (i) Containment as a means of defining material balance areas for accounting purposes;
  - (ii) Statistical techniques and random sampling in evaluating the flow of nuclear material; and
  - (iii) Concentration of verification procedures on those stages in the nuclear fuel cycle involving the production, processing, use or storage of nuclear material from which nuclear weapons or other nuclear explosive devices could readily be made, and minimization of verification procedures in respect of other nuclear material, on condition that this does not hamper the implementation of this Agreement.

**NATIONAL SYSTEM OF MATERIALS CONTROL**

**Article 7**

- (a) Australia shall establish and maintain a national system (hereinafter referred to as Australia's system) of accounting for and control of all nuclear material subject to safeguards under this Agreement.
- (b) The Agency shall apply safeguards in such a manner as to enable it to verify, in ascertaining that there has been no diversion of nuclear material from peaceful uses to nuclear weapons or other nuclear explosive devices, findings of Australia's system. The Agency's verification shall include, inter alia, independent measurements and observations conducted by the Agency in accordance with the procedures specified in Part II of this Agreement. The Agency, in its verification, shall take due account of the technical effectiveness of Australia's system.

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PROVISION OF INFORMATION TO THE AGENCY

**Article 8**

- (a) In order to ensure the effective implementation of safeguards under this Agreement, Australia shall, in accordance with the provisions set out in Part II of this Agreement, provide the Agency with information concerning nuclear material subject to safeguards under this Agreement and the features of facilities relevant to safeguarding such material.
- (b) (i) The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities under this Agreement.
  - (ii) Information pertaining to facilities shall be the minimum necessary for safeguarding nuclear material subject to safeguards under this Agreement.
- (c) If Australia so requests, the Agency shall be prepared to examine on premises of Australia design information which Australia regards as being of particular sensitivity. Such information need not be physically transmitted to the Agency provided that it remains readily available for further examination by the Agency on premises of Australia.

AGENCY INSPECTORS

**Article 9**

- (a) (i) The Agency shall secure the consent of Australia to the designation of Agency inspectors to Australia.
  - (ii) If Australia, either upon proposal of a designation or at any other time after a designation has been made, objects to the designation, the Agency shall propose to Australia an alternative designation or designations.
  - (iii) If, as a result of the repeated refusal of Australia to accept the designation of Agency inspectors, inspections to be conducted under this Agreement would be impeded, such refusal shall be considered by the Board, upon referral by the Director General of the Agency (hereinafter referred to as “the Director General”), with a view to its taking appropriate action.

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- (b) Australia shall take the necessary steps to ensure that Agency inspectors can effectively discharge their functions under this Agreement.
- (c) The visits and activities of Agency inspectors shall be so arranged as:
- (i) To reduce to a minimum the possible inconvenience and disturbance to the Australian authorities concerned and to the peaceful nuclear activities inspected; and
  - (ii) To ensure protection of industrial secrets or any other confidential information coming to the inspectors' knowledge.

#### PRIVILEGES AND IMMUNITIES

##### **Article 10**

Australia shall apply the relevant provisions as accepted of the Agreement on the Privileges and Immunities of the Agency to the Agency (including its property, funds and assets), and to its inspectors and other officials performing functions under this Agreement.

#### TERMINATION OF SAFEGUARDS

##### **Article 11**

##### Consumption or dilution of nuclear material

Safeguards shall terminate on nuclear material upon determination by the Agency that the material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practically irrecoverable.

##### **Article 12**

##### Transfer of nuclear material out of Australia

Australia shall give the Agency notification of intended transfers of nuclear material subject to safeguards under this Agreement out of Australia, in accordance with the provisions set out in Part II of this Agreement. The Agency shall terminate safeguards on nuclear material under this Agreement when the recipient State has assumed responsibility therefor, as provided for in Part II of this Agreement. The Agency shall maintain records indicating each transfer and, where applicable, the re-application of safeguards to the transferred nuclear material.

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**Article 13**

Provisions relating to nuclear material to be used in non-nuclear activities

If Australia wishes to use nuclear material subject to safeguards under this Agreement in non-nuclear activities, such as the production of alloys or ceramics, it shall agree with the Agency on the circumstances under which the safeguards on such nuclear material may be terminated.

**NON-APPLICATION OF SAFEGUARDS TO NUCLEAR MATERIAL  
TO BE USED IN NON-PEACEFUL ACTIVITIES**

**Article 14**

If Australia intends to exercise its discretion to use nuclear material which is required to be safeguarded under this Agreement in a nuclear activity which does not require the application of safeguards under this Agreement, the following procedures shall apply:

- (a) Australia shall inform the Agency of the activity, making it clear:
  - (i) That the use of the nuclear material in a non-proscribed military activity will not be in conflict with an undertaking Australia may have given and in respect of which Agency safeguards apply, that the nuclear material will be used only in a peaceful nuclear activity; and
  - (ii) That during the period of non-application of safeguards the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;
- (b) Australia and the Agency shall make an arrangement so that, only while the nuclear material is in such an activity, the safeguards provided for in this Agreement will not be applied. The arrangement shall identify, to the extent possible, the period or circumstances during which safeguards will not be applied. In any event, the safeguards provided for in this Agreement shall apply again as soon as the nuclear material is reintroduced into a peaceful nuclear activity. The Agency shall be kept informed of the total quantity and composition of such unsafeguarded nuclear material in Australia and of any export of such nuclear material; and

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- (c) Each arrangement shall be made in agreement with the Agency. Such agreement shall be given as promptly as possible and shall relate only to such matters as, inter alia, temporal and procedural provisions and reporting arrangements, and shall not involve any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein.

#### FINANCE

##### **Article 15**

Australia and the Agency shall bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However, if Australia or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so. In any case the Agency shall bear the cost of any additional measuring or sampling which inspectors may request.

#### THIRD PARTY LIABILITY FOR NUCLEAR DAMAGE

##### **Article 16**

Australia shall ensure that any protection against third party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws or regulations shall apply to the Agency and its officials for the purpose of the implementation of this Agreement, in the same way as that protection applies to nationals of Australia.

#### INTERNATIONAL RESPONSIBILITY

##### **Article 17**

Any claim by Australia against the Agency or by the Agency against Australia in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law.

#### MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION

##### **Article 18**

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If the Board, upon report of the Director General, decides that an action by Australia is essential and urgent in order to ensure verification that nuclear material subject to safeguards under this Agreement is not diverted to nuclear weapons or other nuclear explosive devices, the Board may call upon Australia to take the required action without delay, irrespective of whether procedures have been invoked pursuant to Article 22 of this Agreement for the settlement of a dispute.

#### **Article 19**

If the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement, to nuclear weapons or other nuclear explosive devices, it may make the reports provided for in paragraph C of Article XII of the Statute of the Agency (hereinafter referred to as “the Statute”) and may also take, where applicable, the other measures provided for in that paragraph. In taking such action the Board shall take account of the degree of assurance provided by the safeguards measures that have been applied and shall afford Australia every reasonable opportunity to furnish the Board with any necessary reassurance.

### **INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES**

#### **Article 20**

Australia and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

#### **Article 21**

Australia shall have the right to request that any question arising out of the interpretation or application of this Agreement be considered by the Board. The Board shall invite Australia to participate in the discussion of any such question by the Board.

#### **Article 22**

Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a finding by the Board under Article 19 or an action taken by the Board pursuant to such a finding, which is not



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settled by negotiation or another procedure agreed to by Australia and the Agency shall, at the request of either, be submitted to an arbitral tribunal composed as follows: Australia and the Agency shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If, within thirty days of the request for arbitration, either Australia or the Agency has not designated an arbitrator, either Australia or the Agency may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on Australia and the Agency.

#### SUSPENSION OF APPLICATION OF AGENCY SAFEGUARDS UNDER OTHER AGREEMENTS

##### **Article 23**

The application of Agency safeguards in Australia under other safeguards agreements with the Agency shall be suspended while this Agreement is in force.

#### REVIEW OF THE OPERATION OF THE AGREEMENT

##### **Article 24**

Australia and the Agency shall, at the request of either, review jointly the operation of this Agreement. In any event such a review shall take place five years after the entry into force of this Agreement.

#### AMENDMENT OF THE AGREEMENT

##### **Article 25**

- (a) Australia and the Agency shall, at the request of either, consult each other on amendments to this Agreement.
- (b) All amendments shall require the agreement of Australia and the Agency.
- (c) Amendments to this Agreement shall enter into force on the same conditions as entry into force of the Agreement itself.

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- (d) The Director General shall promptly inform all Member States of the Agency of any amendment to this Agreement.

#### ENTRY INTO FORCE AND DURATION

##### **Article 26**

This Agreement shall enter into force upon signature by or for the Director General and by the authorized representative of Australia. The Director General shall promptly inform all Member States of the Agency of the entry into force of this Agreement.

##### **Article 27**

This Agreement shall remain in force as long as Australia is party to the Treaty.

#### **PART II**

#### INTRODUCTION

##### **Article 28**

The purpose of this part of the Agreement is to specify the procedures to be applied in the implementation of the safeguards provisions of Part I.

#### OBJECTIVE OF SAFEGUARDS

##### **Article 29**

The objective of the safeguards procedures set forth in this part of the Agreement is the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or of other nuclear explosive devices or for purposes unknown, and deterrence of such diversion by the risk of early detection.

##### **Article 30**

For this purpose material accountancy shall be used as a safeguards measure of fundamental importance, with containment and surveillance as important complementary measures.

### **Article 31**

The technical conclusion of the Agency's verification activities shall be a statement, in respect of each material balance area, of the amount of material unaccounted for over a specific period, and giving the limits of accuracy of the amounts stated.

### **NATIONAL SYSTEM OF ACCOUNTING FOR AND CONTROL OF NUCLEAR MATERIAL**

### **Article 32**

Pursuant to Article 7, the Agency, in carrying out its verification activities, shall make full use of Australia's system of accounting for and control of all nuclear material subject to safeguards under this Agreement and shall avoid unnecessary duplication of Australia's accounting and control activities.

### **Article 33**

Australia's system of accounting for and control of all nuclear material subject to safeguards under this Agreement shall be based on a structure of material balance areas, and shall make provision, as appropriate and specified in the Subsidiary Arrangements, for the establishment of such measures as:

- (a) A measurement system for the determination of the quantities of nuclear material received, produced, shipped, lost or otherwise removed from inventory, and the quantities on inventory;
- (b) The evaluation of precision and accuracy of measurements and the estimation of measurement uncertainty;
- (c) Procedures for identifying, reviewing and evaluating differences in shipper/receiver measurements;
- (d) Procedures for taking a physical inventory;
- (e) Procedures for the evaluation of accumulations of unmeasured inventory and unmeasured losses;
- (f) A system of records and reports showing, for each material balance area, the inventory of nuclear material and the changes in that inventory including receipts into and transfers out of the material balance area;
- (g) Provisions to ensure that the accounting procedures and arrangements are being operated correctly; and

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- (h) Procedures for the submission of reports to the Agency in accordance with Articles 60 to 70.

#### STARTING POINT OF SAFEGUARDS

##### **Article 34**

Safeguards under this Agreement shall not apply to material in mining or ore processing activities.

##### **Article 35**

- (a) When any material containing uranium or thorium which has not reached the stage of the nuclear fuel cycle described in paragraph (c) is directly or indirectly exported to a non-nuclear-weapon State, Australia shall inform the Agency of its quantity, composition and destination, unless the material is exported for specifically non-nuclear purposes;
- (b) When any material containing uranium or thorium which has not reached the stage of the nuclear fuel cycle described in paragraph (c) is imported, Australia shall inform the Agency of its quantity and composition, unless the material is imported for specifically non-nuclear purposes; and
- (c) When any nuclear material of a composition and purity suitable for fuel fabrication or for isotopic enrichment leaves the plant or the process stage in which it has been produced, or when such nuclear material, or any other nuclear material produced at a later stage in the nuclear fuel cycle, is imported into Australia, the nuclear material shall become subject to the other safeguards procedures specified in this Agreement.

#### TERMINATION OF SAFEGUARDS

##### **Article 36**

- (a) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement, under the conditions set forth in Article 11. Where the conditions of that Article are not met, but Australia considers that the recovery of safeguarded nuclear material from residues is not for the time being practicable or desirable, Australia and the Agency shall consult on the appropriate safeguards measures to be applied.
- (b) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement, under the conditions set forth in Article 13, provided that

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Australia and the Agency agree that such nuclear material is practicably irrecoverable.

## EXEMPTIONS FROM SAFEGUARDS

### Article 37

At the request of Australia, the Agency shall exempt nuclear material from safeguards, as follows:

- (a) Special fissionable material, when it is used in gram quantities or less as a sensing component in instruments;
- (b) Nuclear material, when it is used in non-nuclear activities in accordance with Article 13, if such nuclear material is recoverable; and
- (c) Plutonium with an isotopic concentration of plutonium-238 exceeding 80%.

### Article 38

At the request of Australia the Agency shall exempt from safeguards nuclear material that would otherwise be subject to safeguards, provided that the total quantity of nuclear material which has been exempted in Australia in accordance with this Article may not at anytime exceed:

- (a) One kilogram in total of special fissionable material, which may consist of one or more of the following:
  - (i) Plutonium;
  - (ii) Uranium with an enrichment of 0.2 (20%) and above, taken account of by multiplying its weight by its enrichment; and
  - (iii) Uranium with an enrichment below 0.2 (20%) and above that of natural uranium, taken account of by multiplying its weight by five times the square of its enrichment;
- (b) Ten metric tons in total of natural uranium and depleted uranium with an enrichment above 0.005 (0.5%);
- (c) Twenty metric tons of depleted uranium with an enrichment of 0.005 (0.5%) or below; and
- (d) Twenty metric tons of thorium;

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or such greater amounts as may be specified by the Board for uniform application.

**Article 39**

If exempted nuclear material is to be processed or stored together with nuclear material subject to safeguards under this Agreement, Australia and the Agency shall make arrangements for the reapplication of safeguards thereto.

**SUBSIDIARY ARRANGEMENTS**

**Article 40**

Australia and the Agency shall make Subsidiary Arrangements which shall specify in detail, to the extent necessary to permit the Agency to fulfil its responsibilities under this Agreement in an effective and efficient manner, how the procedures laid down in this Agreement are to be applied. The Subsidiary Arrangements may be extended or changed by agreement between Australia and the Agency without amendment of this Agreement.

**Article 41**

The Subsidiary Arrangements shall enter into force at the same time as, or as soon as possible after, the entry into force of this Agreement. Australia and the Agency shall make every effort to achieve their entry into force within ninety days of the entry into force of this Agreement; an extension of that period shall require agreement between Australia and the Agency. Australia shall provide the Agency promptly with the information required for completing the Subsidiary Arrangements. Upon the entry into force of this Agreement, the Agency shall have the right to apply the procedures laid down therein in respect of the nuclear material listed in the inventory provided for in Article 42.

**INVENTORY**

**Article 42**

On the basis of the initial report referred to in Article 63, the Agency shall establish a unified inventory of all nuclear material in Australia subject to safeguards under this Agreement, irrespective of its origin, and shall maintain this inventory on the basis of subsequent reports and of the results of its verification activities. Copies of the inventory shall be made available to Australia at intervals to be agreed.

## DESIGN INFORMATION

### General provisions

#### **Article 43**

Pursuant to Article 8, design information in respect of existing facilities shall be provided to the Agency during the discussion of the Subsidiary Arrangements. The time limits for the provision of design information in respect of the new facilities shall be specified in the Subsidiary Arrangements and such information shall be provided as early as possible before nuclear material is introduced into a new facility.

#### **Article 44**

The design information to be provided to the Agency shall include, in respect of each facility, when applicable:

- (a) The identification of the facility, stating its general character, purpose, nominal capacity and geographic location, and the name and address to be used for routine business purposes;
- (b) A description of the general arrangement of the facility with reference, to the extent feasible, to the form, location and flow of nuclear material and to the general layout of important items of equipment which use, produce or process nuclear material;
- (c) A description of features of the facility relating to material accountancy, containment and surveillance; and
- (d) A description of the existing and proposed procedures at the facility for nuclear material accountancy and control, with special reference to material balance areas established by the operator, measurements of flow and procedures for physical inventory taking.

#### **Article 45**

Other information relevant to the application of safeguards shall also be provided to the Agency in respect of each facility, in particular on organizational responsibility for material accountancy and control, and shall be specified in the Subsidiary Arrangements, as required. Australia shall provide the Agency with supplementary information on the health and safety procedures which the Agency shall observe and with which the inspectors shall comply at the facility.

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**Article 46**

The Agency shall be provided with design information in respect of a modification relevant for safeguards purposes, for examination, and shall be informed of any change in the information provided to it under Article 45, sufficiently in advance for the safeguards procedures to be adjusted when necessary.

**Article 47**

Purposes of examination of design information

The design information provided to the Agency shall be used for the following purposes:

- (a) To identify the features of facilities and nuclear material relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;
- (b) To determine material balance areas to be used for Agency accounting purposes and to select those strategic points which are key measurement points and which will be used to determine flow and inventory of nuclear material; in determining such material balance areas the Agency shall, inter alia, use the following criteria:
  - (i) The size of the material balance area shall be related to the accuracy with which the material balance can be established;
  - (ii) In determining the material balance area advantage shall be taken of any opportunity to use containment and surveillance to help ensure the completeness of flow measurements and thereby to simplify the application of safeguards and to concentrate measurement efforts at key measurement points;
  - (iii) A number of material balance areas in use at a facility or at distinct sites may be combined in one material balance area to be used for Agency accounting purposes when the Agency determines that this is consistent with its verification requirements; and
  - (iv) A special material balance area may be established at the request of Australia around a process step involving commercially sensitive information;



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- (c) To establish the nominal timing and procedures for taking of physical inventory of nuclear material for Agency accounting purposes;
  - (d) To establish the records and reports requirements and records evaluation procedures;
  - (e) To establish requirements and procedures for verification of the quantity and location of nuclear material; and
  - (f) To select appropriate combinations of containment and surveillance methods and techniques and the strategic points at which they are to be applied.

The results of the examination of the design information shall be included in the Subsidiary Arrangements.

#### **Article 48**

##### **Re-examination of design information**

Design information shall be re-examined in the light of changes in operating conditions, of developments in safeguards technology or of experience in the application of verification procedures, with a view to modifying the action the Agency has taken pursuant to Article 47.

#### **Article 49**

##### **Verification of design information**

The Agency, in co-operation with Australia, may send inspectors to facilities to verify the design information provided to the Agency pursuant to Articles 43 to 46, for the purposes stated in Article 47.

#### **INFORMATION IN RESPECT OF NUCLEAR MATERIAL OUTSIDE FACILITIES**

#### **Article 50**

The Agency shall be provided with the following information when nuclear material is to be customarily used outside facilities, as applicable:

- (a) A general description of the use of the nuclear material, its geographic location, and the user's name and address for routine business purposes; and

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- (b) A general description of the existing and proposed procedures for nuclear material accountancy and control, including organizational responsibility for material accountancy and control.

The Agency shall be informed, on a timely basis, of any change in the information provided to it under this Article.

**Article 51**

The information provided to the Agency pursuant to Article 50 may be used, to the extent relevant, for the purposes set out in Article 47(b) to (f).

**RECORDS SYSTEM**

General provisions

**Article 52**

In establishing its national system of materials control as referred to in Article 7, Australia shall arrange that records are kept in respect of each material balance area. The records to be kept shall be described in the Subsidiary Arrangements.

**Article 53**

Australia shall make arrangements to facilitate the examination of records by inspectors.

**Article 54**

Records shall be retained for at least five years.

**Article 55**

Records shall consist, as appropriate, of:

- (a) Accounting records of all nuclear material subject to safeguards under this Agreement; and
- (b) Operating records for facilities containing such nuclear material.

**Article 56**

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The system of measurements on which the records used for the preparation of reports are based shall either conform to the latest international standards or be equivalent in quality to such standards.

Accounting records

**Article 57**

The accounting records shall set forth the following in respect of each material balance area:

- (a) All inventory changes, so as to permit a determination of the book inventory at any time;
- (b) All measurement results that are used for determination of the physical inventory; and
- (c) All adjustments and corrections that have been made in respect of inventory changes, book inventories and physical inventories.

**Article 58**

For all inventory changes and physical inventories the records shall show, in respect of each batch of nuclear material: material identification, batch data and source data. The records shall account for uranium, thorium and plutonium separately in each batch of nuclear material. For each inventory change, the date of the inventory change and, when appropriate, the originating material balance area and the receiving material balance area or the recipient, shall be indicated.

**Article 59**

Operating records

The operating records shall set forth, as appropriate, in respect of each material balance area:

- (a) Those operating data which are used to establish changes in the quantities and composition of nuclear material;
- (b) The data obtained from the calibration of tanks and instruments and from sampling and analyses, the procedures to control the quality of measurements and the derived estimates of random and systematic error;

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- (c) A description of the sequence of the actions taken in preparing for, and in taking, a physical inventory, in order to ensure that it is correct and complete; and
  - (d) A description of the actions taken in order to ascertain the cause and magnitude of any accidental or unmeasured loss that might occur.

## REPORTS SYSTEM

### General provisions

#### **Article 60**

Australia shall provide the Agency with reports as detailed in Articles 61 to 70 in respect of nuclear material subject to safeguards under this Agreement.

#### **Article 61**

Reports shall be made in English.

#### **Article 62**

Reports shall be based on the records kept in accordance with Articles 52 to 59 and shall consist, as appropriate, of accounting reports and special reports.

### Accounting reports

#### **Article 63**

The Agency shall be provided with an initial report on all nuclear material subject to safeguards under this Agreement. The initial report shall be dispatched by Australia to the Agency within thirty days of the last day of the calendar month in which this Agreement enters into force, and shall reflect the situation as of the last day of that month.

#### **Article 64**

Australia shall provide the Agency with the following accounting reports for each material balance area:

- (a) Inventory change reports showing all changes in the inventory of nuclear material. The reports shall be dispatched as soon as possible and in any event within thirty days after the end of the month in which the inventory changes occurred or were established; and

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- (b) Material balance reports showing the material balance based on a physical inventory of nuclear material actually present in the material balance area. The reports shall be dispatched as soon as possible and in any event within thirty days after the physical inventory has been taken.

The reports shall be based on data available as of the date of reporting and may be corrected at a later date, as required.

#### **Article 65**

Inventory change reports shall specify identification and batch data for each batch of nuclear material, the date of the inventory change and, as appropriate, the originating material balance area and the receiving material balance area or the recipient. These reports shall be accompanied by concise notes:

- (a) Explaining the inventory changes, on the basis of the operating data contained in the operating records provided for under Article 59 (a); and
- (b) Describing, as specified in the Subsidiary Arrangements, the anticipated operational programme, particularly the taking of a physical inventory.

#### **Article 66**

Australia shall report each inventory change, adjustment and correction, either periodically in a consolidated list or individually. Inventory changes shall be reported in terms of batches. As specified in the Subsidiary Arrangements, small changes in inventory of nuclear material, such as transfers of analytical samples, may be combined in one batch and reported as one inventory change.

#### **Article 67**

The Agency shall provide Australia with semi-annual statements of book inventory of nuclear material subject to safeguards under this Agreement, for each material balance area, as based on the inventory change reports for the period covered by each such statement.

#### **Article 68**

Material balance reports shall include the following entries, unless otherwise agreed by Australia and the Agency:

- (a) Beginning physical inventory;
  - (b) Inventory changes (first increases, then decreases);
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- (c) Ending book inventory;
  - (d) Shipper/receiver differences;
  - (e) Adjusted ending book inventory;
  - (f) Ending physical inventory; and
  - (g) Material unaccounted for.

A statement of the physical inventory, listing all batches separately and specifying material identification and batch data for each batch, shall be attached to each material balance report.

#### **Article 69**

##### Special reports

Australia shall make special reports without delay:

- (a) If any unusual incident or circumstances lead Australia to believe that there is or may have been loss of nuclear material that exceeds the limits specified for this purpose in the Subsidiary Arrangements; or
- (b) If the containment has unexpectedly changed from that specified in the Subsidiary Arrangements to the extent that unauthorized removal of nuclear material has become possible.

#### **Article 70**

##### Amplification and clarification of reports

If the Agency so requests, Australia shall provide it with amplifications or clarifications of any report, in so far as relevant for the purpose of safeguards.

#### **INSPECTIONS**

#### **Article 71**

##### General provisions

The Agency shall have the right to make inspections as provided for in Articles 72 to 83.

##### Purposes of inspections

#### **Article 72**

The Agency may make ad hoc inspections in order to:

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- (a) Verify the information contained in the initial report on the nuclear material subject to safeguards under this Agreement;
  - (b) Identify and verify changes in the situation which have occurred since the date of the initial report; and
  - (c) Identify, and if possible verify the quantity and composition of, nuclear material in accordance with Articles 94 and 97 before its transfer out of or upon its transfer into Australia.

#### **Article 73**

The Agency may make routine inspections in order to:

- (a) Verify that reports are consistent with records;
- (b) Verify the location, identity, quantity and composition of all nuclear material subject to safeguards under this Agreement; and
- (c) Verify information on the possible causes of material unaccounted for, shipper/receiver differences and uncertainties in the book inventory.

#### **Article 74**

Subject to the procedures laid down in Article 78, the Agency may make special inspections:

- (a) In order to verify the information contained in special reports; or
- (b) If the Agency considers that information made available by Australia, including explanations from Australia and information obtained from routine inspections, is not adequate for the Agency to fulfil its responsibilities under this Agreement.

An inspection shall be deemed to be special when it is either additional to the routine inspection effort provided for in Articles 79 to 83 or involves access to information or locations in addition to the access specified in Article 77 for ad hoc and routine inspections, or both.

#### Scope of inspections

#### **Article 75**

For the purposes specified in Articles 72 to 74, the Agency may:

- (a) Examine the records kept pursuant to Articles 52 to 59;

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- (b) Make independent measurements of all nuclear material subject to safeguards under this Agreement;
  - (c) Verify the functioning and calibration of instruments and other measuring and control equipment;
  - (d) Apply and make use of surveillance and containment measures; and
  - (e) Use other objective methods which have been demonstrated to be technically feasible.

#### **Article 76**

Within the scope of Article 75, the Agency shall be enabled:

- (a) To observe that samples at key measurement points for material balance accountancy are taken in accordance with procedures which produce representative samples, to observe the treatment and analysis of the samples and to obtain duplicates of such samples;
- (b) To observe that the measurement of nuclear material at key measurement points for material balance accountancy are representative, and to observe the calibration of the instruments and equipment involved;
- (c) To make arrangements with Australia that, if necessary:
  - (i) Additional measurements are made and additional samples taken for the Agency's use;
  - (ii) The Agency's standard analytical samples are analysed;
  - (iii) Appropriate absolute standards are used in calibrating instruments and other equipment; and
  - (iv) Other calibrations are carried out;
- (d) To arrange to use its own equipment for independent measurement and surveillance, and if so agreed and specified in the Subsidiary Arrangements to arrange to install such equipment;
- (e) To apply its seals and other identifying and tamper-indicating devices to containments, if so agreed and specified in the Subsidiary Arrangements; and
- (f) To make arrangements with Australia for the shipping of samples taken for the Agency's use.



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Access for inspections

**Article 77**

- (a) For the purposes specified in Article 72 (a) and (b) and until such time as the strategic points have been specified in the Subsidiary Arrangements, the Agency inspectors shall have access to any location where the initial report or any inspections carried out in connection with it indicate that nuclear material is present;
- (b) For the purposes specified in Article 72 (c) the inspectors shall have access to any location of which the Agency has been notified pursuant to Articles 93 (d) (iii) or 96 (d) (iii);
- (c) For the purposes specified in Article 73 the inspectors shall have access only to the strategic points specified in the Subsidiary Arrangements and to the records maintained pursuant to Articles 52 to 59; and
- (d) In the event of Australia concluding that any unusual circumstances require extended limitations on access by the Agency, Australia and the Agency shall promptly make arrangements with a view to enabling the Agency to discharge its safeguards responsibilities in the light of these limitations. The Director General shall report each such arrangement to the Board.

**Article 78**

In circumstances which may lead to special inspections for the purposes specified in Article 74, Australia and the Agency shall consult forthwith. As a result of such consultations the Agency may:

- (a) Make inspections in addition to the routine inspection effort provided for in Articles 79 to 83; and
- (b) Obtain access, in agreement with Australia, to information or locations in addition to those specified in Article 77. Any disagreement concerning the need for additional access shall be resolved in accordance with Articles 21 and 22; in case action by Australia is essential and urgent, Article 18 shall apply.

Frequency and intensity of routine inspections

**Article 79**

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The Agency shall keep the number, intensity and duration of routine inspections, applying optimum timing, to the minimum consistent with the effective implementation of the safeguards procedures set forth in this Agreement, and shall make the optimum and most economical use of inspection resources available to it.

#### **Article 80**

The Agency may carry out one routine inspection per year in respect of facilities and material balance areas outside facilities with a content or annual throughput, whichever is greater, of nuclear material not exceeding five effective kilograms.

#### **Article 81**

The number, intensity, duration, timing and mode of routine inspections in respect of facilities with a content or annual throughput of nuclear material exceeding five effective kilograms shall be determined on the basis that in the maximum or limiting case the inspection regime shall be no more intensive than is necessary and sufficient to maintain continuity of knowledge of the flow and inventory of nuclear material, and the maximum routine inspection effort in respect of such facilities shall be determined as follows:

- (a) For reactors and sealed storage installations the maximum total of routine inspection per year shall be determined by allowing one sixth of a man-year of inspection for each such facility;
- (b) For facilities, other than reactors or sealed storage installations, involving plutonium or uranium enriched to more than 5%, the maximum total of routine inspection per year shall be determined by allowing for each such facility  $30\sqrt{E}$  man-days of inspection per year, where E is the inventory or annual throughput of nuclear material, whichever is greater, expressed in effective kilograms. The maximum established for any such facility shall not, however, be less than 1.5 man-years of inspection; and
- (c) For facilities not covered by paragraphs (a) or (b), the maximum total of routine inspection per year shall be determined by allowing for each such facility one third of a man-year of inspection plus  $0.4 \times E$  man-days of inspection per year, where E is the inventory or annual

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throughput of nuclear material, whichever is greater, expressed in effective kilograms.

Australia and the Agency may agree to amend the figures for the maximum inspection effort specified in this Article, upon determination by the Board that such amendment is reasonable.

### **Article 82**

Subject to Articles 79 to 81 the criteria to be used for determining the actual number, intensity, duration, timing and mode of routine inspections in respect of any facility shall include:

- (a) The form of the nuclear material, in particular, whether the nuclear material is in bulk form or contained in a number of separate items; its chemical composition and, in the case of uranium, whether it is of low or high enrichment; and its accessibility;
- (b) The effectiveness of Australia's national accounting and control system, including the extent to which the operators of facilities are functionally independent of the national accounting and control system; the extent to which the measures specified in Article 33 have been implemented by Australia; the promptness of reports provided to the Agency; their consistency with the Agency's independent verification; and the amount and accuracy of the material unaccounted for, as verified by the Agency;
- (c) Characteristics of Australia's nuclear fuel cycle, in particular, the number and types of facilities containing nuclear material subject to safeguards, the characteristics of such facilities relevant to safeguards, notably the degree of containment; the extent to which the design of such facilities facilitates verification of the flow and inventory of nuclear material; and the extent to which information from different material balance areas can be correlated;
- (d) International interdependence, in particular, the extent to which nuclear material is received from or sent to other States for use or processing; any verification activities by the Agency in connection therewith; and the extent to which Australia's peaceful nuclear activities are interrelated with those of other States; and

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- (e) Technical developments in the field of safeguards, including the use of statistical techniques and random sampling in evaluating the flow of nuclear material.

### **Article 83**

Australia and the Agency shall consult if Australia considers that the inspection effort is being deployed with undue concentration on particular facilities.

### Notice of inspections

### **Article 84**

The Agency shall give advance notice to Australia before arrival of inspectors at facilities or material balance areas outside facilities, as follows:

- (a) For ad hoc inspections pursuant to Article 72 (c), at least 24 hours; for those pursuant to Article 72 (a) and (b) as well as the activities provided for in Article 49, at least one week;
- (b) For special inspections pursuant to Article 74, as promptly as possible after the Agency and Australia have consulted as provided for in Article 78, it being understood that notification of arrival normally will constitute part of the consultations; and
- (c) For routine inspections pursuant to Article 73, at least 24 hours in respect of the facilities referred to in Article 81 (b) and sealed storage installations containing plutonium or uranium enriched to more than 5%, and one week in all other cases.

Such notice of inspections shall include the names of the inspectors and shall indicate the facilities and the material balance areas outside facilities to be visited and the periods during which they will be visited. If the inspectors are to arrive from outside Australia the Agency shall also give advance notice of the place and time of their arrival in Australia.

### **Article 85**

Notwithstanding the provisions of Article 84, the Agency may, as a supplementary measure, carry out without advance notification a portion of the routine inspections pursuant to Article 81 in accordance with the principle of random sampling. In performing any unannounced inspections, the Agency

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shall fully take into account any operational programme provided by Australia pursuant to Article 65 (b). Moreover, whenever practicable, and on the basis of the operational programme, it shall advise Australia periodically of its general programme of announced and unannounced inspections, specifying the general periods when inspections are foreseen. In carrying out any unannounced inspections, the Agency shall make every effort to minimize any practical difficulties for Australia and for facility operators, bearing in mind the relevant provisions of Articles 45 and 90. Similarly Australia shall make every effort to facilitate the task of the inspectors.

#### Designation of inspectors

##### **Article 86**

The following procedures shall apply to the designation of inspectors:

- (a) The Director General shall inform Australia in writing of the name, qualifications, nationality, grade and such other particulars as may be relevant, of each Agency official he proposes for designation as an inspector for Australia;
- (b) Australia shall inform the Director General within thirty days of the receipt of such a proposal whether it accepts the proposal;
- (c) The Director General may designate each official who has been accepted by Australia as one of the inspectors for Australia, and shall inform Australia of such designations; and
- (d) The Director General, acting in response to a request by Australia or on his own initiative, shall immediately inform Australia of the withdrawal of the designation of any official as an inspector for Australia.

However, in respect of inspectors needed for the activities provided for in Article 49 and to carry out ad hoc inspections pursuant to Article 72(a) and (b) the designation procedures shall be completed if possible within thirty days after the entry into force of this Agreement. If such designation appears impossible within this time limit, inspectors for such purposes shall be designated on a temporary basis.

##### **Article 87**

Australia shall grant or renew as quickly as possible appropriate visas, where required, for each inspector designated for Australia.

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Conduct and visits of inspectors

**Article 88**

Inspectors, in exercising their functions under Articles 49 and 72 to 76, shall carry out their activities in a manner designed to avoid hampering or delaying the construction, commissioning or operation of facilities, or affecting their safety. In particular, inspectors shall not operate any facility themselves or direct the staff of a facility to carry out any operation. If inspectors consider that in pursuance of Articles 75 and 76, particular operations in a facility should be carried out by the operator, they shall make a request therefor.

**Article 89**

When inspectors require services available in Australia, including the use of equipment, in connection with the performance of inspections, Australia shall facilitate the procurement of such services and the use of such equipment by inspectors.

**Article 90**

Australia shall have the right to have inspectors accompanied during their inspections by representatives of Australia, provided that inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

STATEMENTS ON THE AGENCY'S VERIFICATION ACTIVITIES

**Article 91**

The Agency shall inform Australia of:

- (a) The results of inspections, at intervals to be specified in the Subsidiary Arrangements; and
- (b) The conclusions it has drawn from its verification activities in Australia, in particular by means of statements in respect of each material balance area, which shall be made as soon as possible after a physical inventory has been taken and verified by the Agency and a material balance has been struck.

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## INTERNATIONAL TRANSFERS

### **Article 92**

#### General provisions

Nuclear material subject or required to be subject to safeguards under this Agreement which is transferred internationally shall, for purposes of this Agreement, be regarded as being the responsibility of Australia:

- (a) In the case of import into Australia, from the time that such responsibility ceases to lie with the exporting State, and no later than the time at which the material reaches its destination; and
- (b) In the case of export out of Australia, up to the time at which the recipient State assumes such responsibility, and no later than the time at which the nuclear material reaches its destination.

The point at which the transfer of responsibility will take place shall be determined in accordance with suitable arrangements to be made by the States concerned. Neither Australia nor any other State shall be deemed to have such responsibility for nuclear material merely by reason of the fact that the nuclear material is in transit on or over its territory or its territorial waters, or that it is being transported on a ship under its flag or in its aircraft.

#### Transfers out of Australia

### **Article 93**

- (a) Australia shall notify the Agency of any intended transfer out of Australia of nuclear material subject to safeguards under this Agreement if the shipment exceeds one effective kilogram, or if, within a period of three months, several separate shipments are to be made to the same State, each of less than one effective kilogram but the total of which exceeds one effective kilogram.
- (b) Such notification shall be given to the Agency after the conclusion of the contractual arrangements leading to the transfer and normally at least two weeks before the nuclear material is to be prepared for shipping.
- (c) Australia and the Agency may agree on different procedures for advance notification.
- (d) The notification shall specify:

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- (i) The identification and, if possible, the expected quantity and composition of the nuclear material to be transferred, and the material balance area from which it will come;
  - (ii) The State for which the nuclear material is destined;
  - (iii) The dates on and locations at which the nuclear material is to be prepared for shipping;
  - (iv) The approximate dates of dispatch and arrival of the nuclear material; and
  - (v) At what point of the transfer the recipient State will assume responsibility for the nuclear material for the purpose of this Agreement, and the probable date on which that point will be reached.

#### **Article 94**

The notification referred to in Article 93 shall be such as to enable the Agency to make, if necessary, an ad hoc inspection to identify, and if possible verify the quantity and composition of the nuclear material before it is transferred out of Australia and, if the Agency so wishes or Australia so requests, to affix seals to the nuclear material when it has been prepared for shipping. However, the transfer of the nuclear material shall not be delayed in any way by any action taken or contemplated by the Agency pursuant to such a notification.

#### **Article 95**

If the nuclear material will not be subject to Agency safeguards in the recipient State, Australia shall make arrangements for the Agency to receive, within three months of the time when the recipient State assumes responsibility for the nuclear material from Australia, confirmation by the recipient State of the transfer.

#### Transfers into Australia

#### **Article 96**

- (a) Australia shall notify the Agency of any expected transfer into Australia of nuclear material required to be subject to safeguards under this Agreement if the shipment exceeds one effective kilogram, or if within



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a period of three months, several separate shipments are to be received from the same State, each of less than one effective kilogram but the total of which exceeds one effective kilogram.

- (b) The Agency shall be notified as much in advance as possible of the expected arrival of the nuclear material, and in any case not later than the date on which Australia assumes responsibility for the nuclear material.
- (c) Australia and the Agency may agree on different procedures for advance notification.
- (d) The notification shall specify:
  - (i) The identification and, if possible, the expected quantity and composition of the nuclear material;
  - (ii) At what point of the transfer Australia will assume responsibility for the nuclear material for the purpose of this Agreement, and the probable date on which that point will be reached; and
  - (iii) The expected date of arrival, the location where, and the date on which, the nuclear material is intended to be unpacked.

#### **Article 97**

The notification referred to in Article 96 shall be such as to enable the Agency to make, if necessary, an ad hoc inspection to identify, and if possible verify the quantity and composition of, the nuclear material at the time the consignment is unpacked. However, unpacking shall not be delayed by any action taken or contemplated by the Agency pursuant to such a notification.

#### **Article 98**

##### **Special reports**

Australia shall make a special report as envisaged in Article 69 if any unusual incident or circumstances, including the occurrence of significant delay, lead Australia to believe that there is or may have been loss of nuclear material during an international transfer.

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DEFINITIONS

**Article 99**

For the purposes of this Agreement:

- A. Adjustment means an entry into an accounting record or a report showing a shipper/receiver difference or material unaccounted for.
- B. Annual throughput means, for the purposes of Articles 80 and 81, the amount of nuclear material transferred annually out of a facility working at nominal capacity.
- C. Batch means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of separate items.
- D. Batch data means the total weight of each element of nuclear material and, in the case of plutonium and uranium, the isotopic composition when appropriate. The units of account shall be as follows:
- (a) Grams of contained plutonium;
  - (b) Grams of total uranium and grams of contained uranium-235 plus uranium-233 for uranium enriched in these isotopes; and
  - (c) Kilograms of contained thorium, natural uranium or depleted uranium.
- For reporting purposes the weights of individual items in the batch shall be added together before rounding to the nearest unit.
- E. Book inventory of a material balance area means the algebraic sum of the most recent physical inventory of that material balance area and of all inventory changes that have occurred since that physical inventory was taken.
- F. Correction means an entry into an accounting record or a report to rectify an identified mistake or to reflect an improved measurement of a quantity previously entered into the record or report. Each correction must identify the entry to which it pertains.
- G. Effective kilogram means a special unit used in safeguarding nuclear material. The quantity in effective kilograms is obtained by taking:
- (a) For plutonium, its weight in kilograms;

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- (b) For uranium with an enrichment of 0.01 (1%) and above, its weight in kilograms multiplied by the square of its enrichment;
  - (c) For uranium with an enrichment below 0.01 (1%) and above 0.005 (0.5%), its weight in kilograms multiplied by 0.0001; and
  - (d) For depleted uranium with an enrichment of 0.005 (0.5%) or below, and for thorium, its weight in kilograms multiplied by 0.00005.

H. Enrichment means the ratio of the combined weight of the isotopes uranium-233 and uranium-235 to that of the total uranium in question.

I. Facility means:

- (a) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or
- (b) Any location where nuclear material in amounts greater than one effective kilogram is customarily used.

J. Inventory change means an increase or decrease, in terms of batches, of nuclear material in a material balance area; such a change shall involve one of the following:

(a) Increases:

- (i) Import;
- (ii) Domestic receipt: receipts from other material balance areas, receipts from a non-safeguarded (non-peaceful) activity or receipts at the starting point of safeguards;
- (iii) Nuclear production: production of special fissionable material in a reactor; and
- (iv) De-exemption: re-application of safeguards on nuclear material previously exempted therefrom on account of its use or quantity.

(b) Decreases:

- (i) Export;
- (ii) Domestic shipment: shipments to other material balance areas or shipments for a non-safeguarded (non-peaceful) activity;
- (iii) Nuclear loss: loss of nuclear material due to its transformation into other element(s) or isotope(s) as a result of nuclear reactions;

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- (iv) Measured discard: nuclear material which has been measured, or estimated on the basis of measurements, and disposed of in such a way that it is not suitable for further nuclear use;
  - (v) Retained waste: nuclear material generated from processing or from an operational accident, which is deemed to be unrecoverable for the time being but which is stored;
  - (vi) Exemption: exemption of nuclear material from safeguards on account of its use or quantity; and
  - (vii) Other loss: for example, accidental loss (that is, irretrievable and inadvertent loss of nuclear material as the result of an operational accident) or theft.

K. Key measurement point means a location where nuclear material appears in such a form that it may be measured to determine material flow or inventory. Key measurement points thus include, but are not limited to, the inputs and outputs (including measured discards) and storages in material balance areas.

L. Man-year of inspection means, for the purposes of Article 81, 300 man-days of inspection, a man-day being a day during which a single inspector has access to a facility at any time for a total of not more than eight hours.

M. Material balance area means an area in or outside of a facility such that:

- (a) The quantity of nuclear material in each transfer into or out of each material balance area can be determined; and
- (b) The physical inventory of nuclear material in each material balance area can be determined when necessary, in accordance with specified procedures,

in order that the material balance for Agency safeguards purposes can be established.

N. Material unaccounted for means the difference between book inventory and physical inventory.

O. Nuclear material means any source or any special fissionable material as defined in Article XX of the Statute. The term source material shall not be interpreted as applying to ore or ore residue. Any determination by the Board under Article XX of the Statute after the entry into force of this Agreement which adds to the materials considered to be source material or special

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fissionable material shall have effect under this Agreement only upon acceptance by Australia.

P. Physical inventory means the sum of all the measured or derived estimates of batch quantities of nuclear material on hand at a given time within a material balance area, obtained in accordance with specified procedures.

Q. Shipper/receiver difference means the difference between the quantity of nuclear material in a batch as stated by the shipping material balance area and as measured at the receiving material balance area.

R. Source data means those data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data. Source data may include, for example, weight of compounds, conversion factors to determine weight of element, specific gravity, element concentration, isotopic ratios, relationship between volume and manometer readings and relationship between plutonium produced and power generated.

S. Strategic point means a location selected during examination of design information where, under normal conditions and when combined with the information from all strategic points taken together, the information necessary and sufficient for the implementation of safeguards measures is obtained and verified; a strategic point may include any location where key measurements related to material balance accountancy are made and where containment and surveillance measures are executed.

DONE in Vienna on the 10th day of July 1974 in duplicate in the English language.

For AUSTRALIA: J. R. ROWLAND (signed).

For the INTERNATIONAL ATOMIC ENERGY AGENCY: JOHN A. HALL  
(signed).

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## Schedule 4—Convention on the physical protection of nuclear material

### Section 4

*The States Parties to this Convention,*

*Recognizing* the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

*Convinced* of the need for facilitating international co-operation in the peaceful application of nuclear energy,

*Desiring* to avert the potential dangers posed by the unlawful taking and use of nuclear material,

*Convinced* that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

*Aware of the need for* international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

*Convinced* that this Convention should facilitate the safe transfer of nuclear material,

*Stressing* also the importance of the physical protection of nuclear material in domestic use, storage and transport,

*Recognizing* the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

*Have agreed* as follows:

### Article 1

For the purposes of this Convention:

- (a) “nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

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- (b) “uranium enriched in the isotope 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotopes 238 is greater than the ratio of isotopes 235 to the isotope 238 occurring in nature;
  - (c) “international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

### **Article 2**

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.
2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.
3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

### **Article 3**

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

### **Article 4**

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

#### **Article 5**

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.
  2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
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- (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;
  - (b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
    - (i) co-ordinate their efforts through diplomatic and other agreed channels;
    - (ii) render assistance, if requested;
    - (iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

#### **Article 6**

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

#### **Article 7**

1. The intentional commission of:
- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear
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material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

- (b) a theft or robbery of nuclear material;
- (c) an embezzlement or fraudulent obtaining of nuclear material;
- (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (e) a threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage; or
  - (ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
- (g) an act which constitutes participation in any offence described in paragraphs (a) to (f),

shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

#### **Article 8**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:

- (a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over

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the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

#### **Article 9**

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

#### **Article 10**

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

#### **Article 11**

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

#### **Article 12**

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Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

### **Article 13**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

### **Article 14**

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.
3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

### **Article 15**

The Annexes constitute an integral part of this Convention.

### **Article 16**

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

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2. At intervals of not less than five years thereafter, the majority of State Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

#### **Article 17**

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

#### **Article 18**

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.

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3. After its entry into force, this Convention will be open for accession by all States.
  4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.
    - (b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.
    - (c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.
    - (d) Such an organization shall not hold any vote additional to those of its Member States.
  5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

#### **Article 19**

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.\*\*
2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 20**

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued.
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Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

#### **Article 21**

1. Any State party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

#### **Article 22**

The depositary shall promptly notify all States of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with article 17;
- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

#### **Article 23**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

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IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

## ANNEX I

### Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
  - (a) For Category III materials, storage within an area to which access is controlled;
  - (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
  - (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
  - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangement among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
  - (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;



- (c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

## ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b</sup> —uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	—uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	—uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d e</sup>	
a All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.				

#### **Schedule 4** Convention on the physical protection of nuclear material

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- b Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.
  - c Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.
  - d Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.
  - e Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

## Schedule 5—Prescribed international agreements

### Section 4

<b>Title</b>	<b>Date signed on behalf of Australia</b>
Agreement between the Government of Australia and the Government of Canada for Co-operation in the Peaceful Uses of Atomic Energy	4 August 1959
Agreement between the Government of Australia and the Government of Japan for Co-operation in the Peaceful Uses of Atomic Energy	21 February 1972
Agreement between the Government of Australia and the Government of Finland concerning the Transfer of Nuclear Material between Australia and Finland	20 July 1978
Agreement between the Government of Australia and the Government of the Philippines on co-operation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material	8 August 1978
Agreement between the Government of Australia and the Government of the Republic of Korea concerning Co-operation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material	2 May 1979
Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy	5 July 1979
Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Nuclear Transfers between Australia and the United Kingdom	24 July 1979
Agreement between the Government of Australia and the Government of France relating to the Conversion and/or enrichment in France of Australian origin nuclear material supplied to Japan under a sales contract concluded prior to 2 December 1972	30 October 1980
Agreement between the Government of Australia and the Government of France concerning Nuclear Transfers between	7 January 1981

**Schedule 5** Prescribed international agreements

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<b>Title</b>	<b>Date signed on behalf of Australia</b>
Australia and France	
Agreement between the Government of Australia and the Government of Canada concerning the Peaceful Uses of Nuclear Energy	9 March 1981
Agreement between the Government of Australia and the Government of Sweden on conditions and controls for Nuclear Transfers for Peaceful Purposes between Australia and Sweden	18 March 1981
Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community	21 September 1981
Agreement between the Government of Australia and the Government of Japan for Co-operation in the Peaceful Uses of Nuclear Energy	5 March 1982
Agreement between the Government of Australia and the Government of Sweden amending the agreement between those countries on conditions and controls for Nuclear Transfers for Peaceful Purposes between Australia and Sweden	12 July 1982

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Nuclear Non-Proliferation (Safeguards) Act 1987	8, 1987	17 Mar 1987	s 1 and 2: Royal Assent ss. 23–26: 31 Mar 1988 (see <i>Gazette</i> 1988, No. S68) ss. 32–38: 28 Oct 1987 (see <i>Gazette</i> 1987, No. S284) Remainder: 31 Mar 1987 (see <i>Gazette</i> 1987, No. S57)	
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	2 Dec 1988	—
Patents Act 1990	83, 1990	30 Oct 1990	30 Apr 1991	—
Primary Industries and Energy Legislation Amendment Act 1990	134, 1990	28 Dec 1990	Part 7 (ss. 34–37): 1 Oct 1990 Remainder: Royal Assent	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	ss. 4(1), 10(b) and 15–20: 1 Dec 1988 ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	—
Qantas Sale Act 1992	196, 1992	21 Dec 1992	Sch (Pt 2): 10 Mar 1993 (para 2(3)(a) and gaz 1993, No. GN17)	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Nuclear Non-Proliferation (Safeguards) Amendment Act 1993	33, 1993	20 Sept 1993	1 Nov 1993	—
Evidence (Transitional Provisions and Consequential Amendments) Act 1995	3, 1995	23 Feb 1995	s 14: 23 Feb 1995 (s 2(1)) s 27: 18 Apr 1995 (s 2(13))	s 14
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (item 114): 25 Oct 1996 (s 2(1))	—
Foreign Affairs and Trade Legislation Amendment Act 1997	150, 1997	17 Oct 1997	Sch 1 (items 15–29): 17 Oct 1997 (s 2(2))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 693–695): 5 Dec 1999 (s 2(1), (2) and gaz 1999, No S584)	—
Crimes at Sea Act 2000	13, 2000	31 Mar 2000	ss. 1 and 2: Royal Assent Remainder: 31 Mar 2001	Sch. 2 (item 11)
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 299, 418, 419): 24 May 2001 (s 2(3))	Sch. 2 (items 418, 419)
Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001	35, 2001	28 Apr 2001	26 May 2001	s. 4
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)

*Nuclear Non-Proliferation (Safeguards) Act 1987*

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Compilation No. 20

Compilation date: 8/5/16

Registered: 20/10/16

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Non-Proliferation Legislation Amendment Act 2003	132, 2003	12 Dec 2003	Schedule 1: 13 Dec 2003 Remainder: Royal Assent	Sch. 1 (items 2, 22, 27, 33, 46, 60, 64, 70)
Non-Proliferation Legislation Amendment Act 2007	50, 2007	10 Apr 2007	Sch 1 (items 1–27, 29–54): 11 Apr 2007 Sch 1 (item 28): 8 May 2016 (s 2(1) item 3) Remainder: 10 Apr 2007 (s 2(1) item 1)	Sch. 1 (items 53, 54)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 875–877) and Sch 3 (items 10, 11): 27 Dec 2011 (s2(1) items 7, 12)	Sch. 3 (items 10, 11)
Nuclear Terrorism Legislation Amendment Act 2012	3, 2012	6 Mar 2012	Sch 1 (items 1–7): 20 Apr 2012 (F2012L00893) Sch 2: 6 Mar 2012 (s 2(1) item 4)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 132–136): 25 Mar 2015 (s 2(1) item 10)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 3 (item 26): 10 Dec 2015 (s 2(1) item 7)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 223–225, 408): 10 Mar 2016 (s 2(1) item 6)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part I</b>	
s 3 .....	am No 150, 1997; No 3, 2012
s 4 .....	am No 99, 1988; No 196, 1992; No 3, 1995; No 150, 1997; No 146, 1999; No 35, 2001; No 132, 2003; No 50, 2007; No 3, 2012
s 4A.....	ad No 150, 1997
s 5 .....	am No 5, 2015
s 7 .....	rs No 145, 2015
s 8 .....	am No 150, 1997; No 3, 2012
s 8A.....	ad No 35, 2001
<b>Part II</b>	
Part II heading.....	rs No 132, 2003
s 11 .....	am No 99, 1988; No 3, 1995; No 3, 2012
s 12 .....	am No 132, 2003
s 13 .....	am No 150, 1997; No 50, 2007
s 15 .....	am No 134, 1990
s 16A.....	ad No 132, 2003
s 16B.....	ad No 50, 2007
s 19 .....	am No 132, 2003
s 20 .....	am No 132, 2003
s 22 .....	am No 132, 2003; No 50, 2007
<b>Part III</b>	
<b>Division 1</b>	
s 23 .....	am No 83, 1990; No 13, 2000; No 132, 2003; No 50, 2007; No 4, 2016
s 24 .....	am No 4, 2016
s 25 .....	am No 13, 2000; No 35, 2001; No 132, 2003; No 4, 2016
s 25A.....	ad No 132, 2003
	am No 50, 2007
s 26 .....	am No 83, 1990; No 132, 2003; No 50, 2007; No 4, 2016

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 26A.....	ad No 132, 2003 am No 50, 2007
s 27 .....	am No 132, 2003; No 4, 2016
s 28 .....	am No 132, 2003; No 4, 2016
s 28A.....	ad No 132, 2003
s 29 .....	am No 132, 2003; No 4, 2016
s 29A.....	ad No 50, 2007
s 30 .....	am No 132, 2003; No 50, 2007; No 4, 2016
s 31 .....	am No 137, 2000; No 132, 2003; No 50, 2007; No 4, 2016
s 31A.....	ad No 132, 2003 am No 50, 2007
<b>Division 2</b>	
s 32 .....	rs No 50, 2007 am No 50, 2007
s 33 .....	am No 132, 2003
s 34 .....	am No 132, 2003
s 34A.....	ad No 50, 2007
s 35 .....	am No 132, 2003; No 50, 2007
s 35A.....	ad No 50, 2007
s 36 .....	am No 132, 2003; No 50, 2007
s 37 .....	am No 132, 2003; No 50, 2007
s 38 .....	am No 13, 2000; No 50, 2007
<b>Division 2A</b>	
Division 2A.....	ad No 3, 2012
s 38A.....	ad No 3, 2012
s 38B.....	ad No 3, 2012
s 38C.....	ad No 3, 2012
s 38D.....	ad No 3, 2012
s 38E.....	ad No 3, 2012
s 38F .....	ad No 3, 2012
s 38G.....	ad No 3, 2012

## Endnote 4—Amendment history

Provision affected	How affected
s 38H.....	ad No 3, 2012
s 38J.....	ad No 3, 2012
<b>Division 3</b>	
s 40 .....	am No 132, 2003; No 4, 2016
s 41 .....	am No 132, 2003
<b>Part IV</b>	
<b>Division 1</b>	
s 42 .....	am No 159, 2001; No 132, 2003
s 43 .....	am No 150, 1997
s 45 .....	am No 43, 1996
s 46 .....	rs No 122, 1991
	am No 146, 1999
s 48 .....	am No 122, 1991
s 49 .....	am No 134, 1990
s 50 .....	am No 46, 2011
<b>Division 2</b>	
s 54 .....	am No 132, 2003
s 55 .....	am No 146, 1999
<b>Division 3</b>	
s 57 .....	am No 150, 1997
s 58 .....	am No 35, 2001; No 132, 2003
<b>Division 4</b>	
s 59 .....	am No 150, 1997; No 50, 2007
s 60 .....	am No 150, 1997; No 50, 2007
s 61 .....	am No 50, 2007
s 65 .....	am No 132, 2003
s 66 .....	am No 35, 2001; No 132, 2003; No 4, 2016
<b>Division 5</b>	
s 69 .....	am No 132, 2003
<b>Part IVA</b>	
Part IVA .....	ad No 33, 1993

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 69A.....	ad No 33, 1993
s 69B.....	ad No 33, 1993
s 69C .....	ad No 33, 1993
<b>Part V</b>	
s 70 .....	am No 150, 1997
s 71 .....	am No 132, 2003
s 72 .....	am No 132, 2003; No 50, 2007
s 73 .....	am No 99, 1988; No 132, 2003; No 50, 2007; No 3, 2012
s 74 .....	am No 132, 2003