

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 97**

Issued by the Authority of the Minister for Foreign Affairs

Subject: *Nuclear Non-Proliferation (Safeguards) Act 1987*

*Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2007  
(No. 1)*

The *Nuclear Non-Proliferation (Safeguards) Act 1987* (the Act) gives effect to certain obligations that Australia has as a party to international agreements on the peaceful use of nuclear material and facilities, including the Convention on the Physical Protection of Nuclear Material (Physical Protection Convention), and various bilateral agreements.

Section 74 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. In addition section 70 of the Act provides that powers, duties, functions or discretions under the Act are to be exercised in accordance with specified international agreements identified in the Act, or prescribed in regulations.

The purpose of the Regulations is to update the list of such international agreements. The amendments make reference to: an amendment to the Physical Protection Convention; bilateral nuclear safeguards agreements with Argentina and China; and exchanges of notes amending a nuclear safeguards agreement with Japan. The effect of the amendments is to require that powers, duties, functions or discretions under the Act are exercised in accordance with the new or amended agreements.

The Physical Protection Convention came into force for Australia on 22 September 1987. In 2004 a diplomatic conference was convened to consider means to strengthen the Convention, and on 8 July 2005 agreed a Final Act to amend the Convention to strengthen requirements for protection of nuclear material, and to extend protection to nuclear facilities and nuclear material in use, storage and transport. The amendment comes into force 30 days after two thirds of all States Parties have deposited their instruments of ratification, acceptance or approval.

The Agreement between Australia and the Argentine Republic concerning Cooperation in the Peaceful Uses of Nuclear Energy entered into force on 12 January 2005. Two similar agreements between the Government of Australia and the Government of the People's Republic of China entered into force on 3 February 2007.

The exchanges of notes amending Australia's bilateral nuclear safeguards agreement with Japan came into force upon their conclusion. Relevant dates are indicated in the Attachment.

The effect of the Regulations on business and individuals or the economy has been assessed against Office of Best Practice Regulation guidelines and the impact has been found to be low.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered in the Federal Register of Legislative Instruments.

Authority: Section 74 of the *Nuclear Non-Proliferation (Safeguards) Act 1987*

**Attachment****Details of the *Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2007 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation cites the Regulations as the *Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2007 (No. 1)*.

**Regulation 2 - Commencement**

This regulation provides that the Regulations commence on the day after they are registered.

**Regulation 3 – Amendment of *Nuclear Non-Proliferation (Safeguards) Regulations 1987***

This regulation provides that the *Nuclear Non-Proliferation (Safeguards) Regulations 1987* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 - Amendments****Item [1] – After Regulation 2A**

This item inserts new regulations 2AB and 2AC.

Subregulation 2AB(1) declares, that the amendment to the Physical Protection Convention dated 8 July 2005 has effect for the purposes of the Act. Subregulation 2AB(2) notes that the amendment comes into force on a date determined according to the formula specified. Accordingly, the declaration in subregulation 2AB(1) has no effect before this date.

Regulation 2AC declares that the following amendments to *prescribed international agreements* have effect for the purposes of the Act:

- a.) Exchange of Notes dated 23 November 2006 constituting an Agreement between Australia and Japan to amend the Agreement for Co-operation in the Peaceful Uses of Nuclear Energy of 5 March 1982 by making changes to the delineated and recorded Japanese Nuclear Fuel Cycle Program;
- b.) Exchange of Notes dated 1 August 2000 constituting an Agreement between the Government of Australia and the Government of Japan to further amend the Exchange of Letters constituting an Agreement establishing an Implementing Arrangement pursuant to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy of 5 March 1982;
- c.) Exchange of Notes dated 10 September 1999 constituting an Agreement between the Government of Australia and the Government of Japan to further amend the Exchange of Letters constituting an Agreement establishing an Implementing Arrangement pursuant to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy of 5 March 1982.

**Item [2] – Schedule 1, after item 18**

This item amends Schedule 1 to the Principal Regulations by inserting three new items after item 18. The purpose is to add, in accordance with section 4 of the Act, the following as *prescribed international agreements*:

- (a) Agreement between Australia and the Argentine Republic concerning Cooperation in the Peaceful Uses of Nuclear Energy signed on behalf of Australia on 8 August 2001;
- (b) Agreement between the Government of Australia and the Government of the People's Republic of China on the Transfer of Nuclear Material signed on behalf of Australia on 3 April 2006;
- (c) Agreement between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy signed on behalf of Australia on 3 April 2006.