



Nuclear Non-Proliferation (Safeguards) (Consequential Amendments) Act 1988

No. 10 of 1988

An Act to make amendments of the *Patents Act 1952* consequential upon the enactment of the *Nuclear Non-Proliferation (Safeguards) Act 1987*, and for other purposes

[Assented to 26 April 1988]

[Date of commencement 24 May 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Nuclear Non-Proliferation (Safeguards) (Consequential Amendments) Act 1988*.

(2) The *Patents Act 1952*¹ is in this Act referred to as the Principal Act.

Officers not to furnish information etc.

2. Section 19 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) A person to whom section 71 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* applies who, except when required or authorised by

Nuclear Non-Proliferation (Safeguards)
(Consequential Amendments) No. 10, 1988

that Act or this Act, or under a direction in writing of the Director of Safeguards or by order of a court, furnishes information on a matter that is being, or has been, dealt with under this Act, is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.”.

Effect of publication of complete specification

3. Section 54C of the Principal Act is amended by omitting from subsection (1) “subsection 47E (9)” and substituting “subsections 47E (9) and 58AA (13)”.

4. After section 58 of the Principal Act the following section is inserted in Part IV:

Special provisions relating to associated technology

“58AA. (1) In this section:

‘application’ means an application for a patent and includes a relevant international application;

‘associated technology’ has the same meaning as in the Safeguards Act;

‘authority’ has the same meaning as in the Safeguards Act;

‘Director’ means the Director of Safeguards;

‘international application’ has the same meaning as in Part IVA;

‘permit’ has the same meaning as in the Safeguards Act;

‘receiving Office’ has the same meaning as in Part IVA;

‘relevant international application’ means an international application in relation to which the Patent Office is the receiving Office (even if Australia is not specified in the application as a designated State under Article 4 (1) (ii) of the Treaty);

‘Safeguards Act’ means the *Nuclear Non-Proliferation (Safeguards) Act 1987*;

‘specification’, in relation to an international application, means the description, claims and drawings contained in the application;

‘Treaty’ has the same meaning as in Part IVA.

“(2) Where it appears to the Commissioner that a specification in respect of an application may contain information of a kind referred to in the definition of ‘associated technology’ in subsection 4 (1) of the Safeguards Act, the Commissioner shall give the Director written notice to that effect together with a copy of the application and the specification.

“(3) Where the Director receives notice under subsection (2) in relation to an application, the Director may, if satisfied that the specification contains information of a kind referred to in the definition of ‘associated technology’ in subsection 4 (1) of the Safeguards Act, issue a certificate to that effect.

Nuclear Non-Proliferation (Safeguards)
(Consequential Amendments) No. 10, 1988

“(4) Where the Director is satisfied that:

- (a) the applicant’s possession of the associated technology containing the information was not in accordance with a permit; or
- (b) the communication of the information involved in making the application was not in accordance with an authority;

the Director may include in the certificate:

- (c) if the application is not a relevant international application—a direction that the application should lapse; or
- (d) if the application is a relevant international application—a direction that the application should not be treated as an international application.

“(5) Where the Director issues a certificate under subsection (3) in relation to an application, the Director shall give a copy of the certificate to the Commissioner and the Commissioner shall forthwith give a copy of the certificate to the applicant.

“(6) Where:

- (a) the Commissioner receives a copy of a certificate under subsection (3) in relation to an application; and
- (b) the certificate includes a direction under subsection (4);

then, upon receipt by the Commissioner of a copy of the certificate:

- (c) if the application is not a relevant international application—the application lapses; or
- (d) if the application is a relevant international application—the application shall cease to be treated as an international application.

“(7) Where an application has lapsed under subsection (6), the Commissioner shall advertise that fact in the *Official Journal*.

“(8) Where an application has lapsed, or has ceased to be treated as an international application, under subsection (6) by virtue of a direction under subsection (4), the applicant may apply, in writing, to the Director for the revocation of the direction and the Director may revoke the direction.

“(9) Where an application has lapsed under subsection (6), the applicant may apply, in writing, to the Commissioner for restoration of the lapsed application.

“(10) Where an applicant applies under subsection (9) for restoration of a lapsed application, the Commissioner shall restore the application if satisfied that:

- (a) the direction by virtue of which the application lapsed is no longer in force; and
- (b) there is no other reason why the application should not be restored.

“(11) Where the Commissioner restores the application, the Commissioner shall advertise the restoration in the *Official Journal*.

Nuclear Non-Proliferation (Safeguards)
(Consequential Amendments) No. 10, 1988

“(12) Where a lapsed application is restored under this section, such provisions as are prescribed have effect for the protection or compensation of persons who availed themselves, or took definite steps by contract or otherwise to avail themselves, of the subject-matter of the lapsed application after the lapse of the application and before the day on which the restoration of the application was advertised in the *Official Journal* under subsection (11).

“(13) Proceedings shall not be taken under section 54C in respect of any act or thing done during the period from and including the day on which the application for the patent lapsed to and including the day on which the restoration of the application was advertised in the *Official Journal* under subsection (11).

“(14) Where a relevant international application has ceased to be treated as an international application under subsection (6), the applicant may apply, in writing, to the Commissioner for the application to be reinstated as an international application.

“(15) Where an applicant applies under subsection (14) for the reinstatement of an application, the Commissioner shall reinstate the application as an international application if satisfied that:

- (a) the direction by virtue of which the application ceased to be treated as an international application is no longer in force; and
- (b) there is no other reason why the application should not be reinstated as an international application.

“(16) Where the Commissioner reinstates an application as an international application, the application shall be treated as an international application.

“(17) Where:

- (a) an applicant applies under subsection (14) for the reinstatement of an application as an international application;
- (b) the Commissioner is not able to reinstate the application under subsection (15) by reason only that the application is, in accordance with the Treaty, to be considered as having been withdrawn; and
- (c) the applicant lodges in the Patent Office a request in writing signed by the applicant that the application be treated as an application under this Act for a standard patent or as an application under this Act for a petty patent;

then:

- (d) the application shall be treated as an application under this Act for a standard patent or as an application under this Act for a petty patent, in accordance with the applicant's request;
- (e) where the applicant requests that the application be treated as an application under this Act for a standard patent—the description,

Nuclear Non-Proliferation (Safeguards)
(Consequential Amendments) No. 10, 1988

claims and drawings contained in the application shall be treated as a complete specification lodged in respect of the application;

- (f) where the applicant requests that the application be treated as an application under this Act for a petty patent—the description, claims and drawings contained in the application shall be treated as a petty patent specification lodged in respect of the application; and
- (g) the application and specification shall be treated as having been lodged in the Patent Office on the date on which the application was filed in the Patent Office.

“(18) Where, by virtue of subsection (17), an application is to be treated as an application under this Act for a standard patent or an application under this Act for a petty patent, the application shall be taken to have complied with the requirements of paragraphs 35 (1) (c), (d), (e) and (f) and with the requirements of subsection 35 (2) but shall not be taken, by virtue only of subsection (17) of this section, to have complied with the requirements of paragraph 35 (1) (a) or (b).

“(19) Where the description, claims and drawings contained in an international application are, by virtue of subsection (17), to be treated as a complete specification in relation to the application, the description, claims and drawings shall not, by virtue only of that subsection, be taken to have complied with the requirements of section 40.

“(20) Where the description, claims and drawings contained in an international application are, by virtue of subsection (17), to be treated as a petty patent specification in relation to the application, the description, claims and drawings shall not, by virtue only of that subsection, be taken to have complied with the requirements of section 40.

“(21) Except as otherwise provided by this section, the provisions of this Act (including Part XVI) and the regulations apply to an international application to which subsection (17) applies as if it were an application under this Act.

“(22) Where the Director issues a certificate under subsection (3) in relation to an application, the Director may give written notice to the Commissioner of any prohibitions or restrictions on the publication or communication of the information in the specification that the Director considers appropriate.

“(23) Where the Director gives the Commissioner notice under subsection (22) in relation to an application, the Commissioner shall take such steps as the Commissioner considers necessary or expedient to give effect to the notice.

“(24) Without limiting the generality of subsection (23), the Commissioner, under that subsection, may, by written order signed by the Commissioner, prohibit or restrict the publication or communication of

Nuclear Non-Proliferation (Safeguards)
(Consequential Amendments) No. 10, 1988

information with respect to the subject-matter of the application, whether generally or to a particular person or class of persons.

“(25) A person shall not, except in accordance with the written consent of the Commissioner, publish or communicate information in contravention of an order made under subsection (24).

Penalty:

- (a) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (b) in the case of a body corporate—\$25,000.

“(26) Where an order is in force under subsection (24) in relation to an application for a standard patent, the application may proceed up to the acceptance of the application and complete specification, but the complete specification shall not be open to public inspection, the acceptance shall not be advertised and a patent shall not be granted on the application.

“(27) Where an order is in force under subsection (24) in relation to an application for a petty patent, the application may proceed up to the acceptance of the application and petty patent specification but a patent shall not be granted on the application.

“(28) Where an order under subsection (24) in relation to an application for a standard patent has been revoked after the acceptance of the application and complete specification, the acceptance shall be advertised within 1 month after the date of revocation of the order.

“(29) Nothing in this Act prevents the disclosure of information concerning an invention to the Director for the purpose of obtaining advice as to whether an order under subsection (24) should be made, amended or revoked.”.

International applications

5. Section 58B of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) For the purposes of this Act, an indication, in relation to a deposited microorganism, furnished, in accordance with Rule 13 *bis*.4, in relation to an international application, shall be taken to be included in the description contained in the international application even if the indication is furnished in a document other than the international application.

“(3B) The reference in subsection (3A) to Rule 13 *bis*.4 is a reference to Rule 13 *bis*.4 of the Regulations referred to in the definition of ‘Treaty’ in subsection 58A (1).”.

Nuclear Non-Proliferation (Safeguards)
(Consequential Amendments) No. 10, 1988

Preservation of priority dates

6. Section 58F of the Principal Act is amended by adding at the end the following subsection:

“(2) The reference in paragraph (1) (b) to the applicant includes a reference to a person who is entitled to make a request under subsection 34 (4) in relation to the relevant application.”.

Extension of term of petty patent

7. Section 68B of the Principal Act is amended by omitting from subsection (3) “(a),”.

Registration of patent attorneys

8. Section 133 of the Principal Act is amended by omitting paragraph (3) (c) and substituting the following paragraph:

“(c) has passed in all the subjects of the prescribed examination other than a subject that the person is, in accordance with the regulations, exempted from having to pass;”.

Application for review

9. Section 151 of the Principal Act is amended:

(a) by inserting in paragraph (1) (a) “58AA (10), (15), (23) or (24) or” after “subsection” (first occurring);

(b) by omitting from paragraph (1) (a) “or” (last occurring); and

(c) by inserting after paragraph (1) (a) the following paragraph:

“(aa) a decision of the Director of Safeguards under subsection 58AA (3), (4), (8) or (22); or”.

NOTE

1. No. 42, 1952, as amended. For previous amendments, see No. 14, 1954; No. 3, 1955; No. 107, 1960; No. 84, 1962; No. 93, 1966; No. 34, 1969; No. 216, 1973; Nos. 91 and 162, 1976; No. 131, 1978; Nos. 9, 19 and 188, 1979; No. 176, 1981; No. 26, 1982; No. 91, 1983; Nos. 92 and 165, 1984; Nos. 65 and 193, 1985; and No. 23, 1987.

[*Minister's second reading speech made in—*
House of Representatives on 18 September 1987
Senate on 19 February 1988]