



Non-Proliferation Legislation Amendment Act 2007

No. 50, 2007

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 50, 2007

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

[Assented to 10 April 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Non-Proliferation Legislation
Amendment Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	10 April 2007
2. Schedule 1, items 1 to 27	The day after this Act receives the Royal Assent.	11 April 2007
3. Schedule 1, item 28	The day on which the amendments done at Vienna on 8 July 2005 to the Convention on the Physical Protection of Nuclear Material take effect for the purposes of the <i>Nuclear Non-Proliferation (Safeguards) Act 1987</i> in accordance with paragraph 4(3)(b) of that Act. However, the provision(s) do not commence at all if that event does not occur.	8 May 2016
4. Schedule 1, items 29 to 54	The day after this Act receives the Royal Assent.	11 April 2007

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australian Federal Police Act 1979

1 Subsection 4(1) (subparagraph (a)(v) of the definition of protective service offence)

After “subsection 29(2),” insert “29A(1),”.

Chemical Weapons (Prohibition) Act 1994

2 Subsection 5(1)

Omit “This Act”, substitute “Subject to this Act, this Act”.

3 At the end of subsection 5(1)

Add:

Note: Extended geographical jurisdiction applies to the offence against section 12.

4 Subsection 8(1)

Omit “(1)”.

5 Subsection 8(2)

Repeal the subsection.

6 Section 12

Before “A”, insert “(1)”.

7 At the end of section 12

Add:

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

Comprehensive Nuclear Test-Ban Treaty Act 1998

8 Section 9

Repeal the section, substitute:

9 Extraterritorial operation of offence

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

Nuclear Non-Proliferation (Safeguards) Act 1987

9 Subsection 4(1) (definition of permit)

Omit “or 16A”, substitute “, 16A or 16B”.

10 Subsection 13(3)

After “conditions in respect of”, insert “one or more of the following”.

11 After paragraph 13(3)(d)

Insert:

- (da) the taking of measures that are consistent with Australia’s obligations under the Physical Protection Convention;

12 Paragraph 13(3)(n)

Omit “and”.

13 After section 16A

Insert:

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 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.

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.

14 Paragraph 22(1)(d)

Omit “or 18(2)”, substitute “, 16B(1) or 18(2)”.

15 Subsection 23(1)

Omit “5 years”, substitute “10 years”.

16 Subsection 23(2)

Repeal the subsection, substitute:

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

17 Subsection 25A(3)

Repeal the subsection, substitute:

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

18 Subsection 26(1)

Omit “2 years”, substitute “10 years”.

19 After subsection 26(4)

Insert:

- (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*).

20 Subsection 26(5)

Repeal the subsection, substitute:

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

21 Subsection 26A(1) (penalty)

Omit “2 years”, substitute “8 years”.

22 Subsection 26A(3)

Repeal the subsection, substitute:

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

23 After section 29

Insert:

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).

24 At the end of section 30

Add:

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

25 Subsection 31(1)

Omit “6 months”, substitute “2 years”.

26 Subsection 31A(4)

Repeal the subsection, substitute:

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

27 Section 32

Repeal the section, substitute:

32 Definitions

In this Division:

nuclear facility means a facility (including associated buildings and equipment) in which nuclear material is:

- (a) produced; or
- (b) processed; or
- (c) used; or
- (d) handled; or
- (e) stored; or
- (f) disposed of;

but only if damage to or interference with the facility (including associated buildings and equipment) could lead to the release of significant amounts of radiation or radioactive material.

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

28 Section 32 (definition of ***nuclear facility***)

Repeal the definition, substitute:

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

29 After section 34

Insert:

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*).

30 Paragraph 35(a)

Omit “serious injury to”, substitute “the death of, or serious injury to,”.

Note: The heading to section 35 is altered by omitting “injury to persons or damage to property” and substituting “death or injury to persons or damage to property or the environment”.

31 At the end of paragraph 35(b)

Add “or to the environment”.

32 Section 35 (penalty)

Omit “10 years”, substitute “20 years”.

33 After section 35

Insert:

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.

34 Section 36

Omit “to cause”.

35 Paragraph 36(d)

Before “the”, insert “to cause”.

36 Paragraph 36(e)

Before “damage”, insert “to cause”.

37 At the end of paragraph 36(e)

Add “or to the environment”.

38 At the end of section 36 (before the penalty)

Add:

; or (f) to commit an offence against section 35A.

39 Section 37

After “section 33”, insert “, or section 35A,”.

40 At the end of paragraph 38(2)(a)

Add “and”.

41 Paragraphs 38(2)(b) and (c)

Repeal the paragraphs, substitute:

(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

42 At the end of paragraph 38(3)(a)

Add “or”.

43 At the end of subsection 38(3)

Add:

; 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.

44 At the end of paragraphs 59(1)(a), (b), (c), (d) and (e)

Add “or”.

45 Paragraph 59(1)(f)

Repeal the paragraph, substitute:

- (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

46 Subsection 59(6)

Omit “in accordance with the appropriate form prescribed for the purposes of this subsection”.

47 After subsection 60(2)

Insert:

- (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.

48 Paragraph 60(3)(a)

After “premises”, insert “or a vessel, aircraft or vehicle”.

49 Subsection 60(3)

After “into the premises”, insert “, vessel, aircraft or vehicle”.

50 Subsection 61(4)

Omit “in accordance with the appropriate form prescribed for the purposes of this subsection”.

51 At the end of subsection 72(5)

Add:

- ; (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).

52 After paragraph 73(2)(ba)

Insert:

- (bb) in the case of a permit granted under section 16B—any matter referred to in paragraph 16B(3)(a) or (b); and

53 Application—communication of information

The amendment made by item 19 applies in relation to communications made after the commencement of that item.

54 Application—decommissioning of facility without permit

- (1) Section 29A of the *Nuclear Non-Proliferation (Safeguards) Act 1987* applies to causing work to be carried out after the commencement of this item, even if the work started to be carried out (as a result of that cause) before that commencement.
- (2) However, causing work to be carried out in the period of 6 months starting on the day of commencement of this item is not an offence against that section if the work started to be carried out (as a result of that cause) before that commencement.

[Minister's second reading speech made in—
Senate on 6 December 2006
House of Representatives on 22 March 2007]

(192/06)

