



# **Civil Nuclear Transfers to India Act 2016**

**No. 101, 2016**

**An Act to make certain provision in relation to the export of nuclear material and nuclear-related items, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Civil Nuclear Transfers to India Act 2016

No. 101, 2016

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**An Act to make certain provision in relation to the export of nuclear material and nuclear-related items, and for related purposes**

*[Assented to 7 December 2016]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Civil Nuclear Transfers to India Act 2016*.

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	8 December 2016

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Object of this Act

The object of this Act is to codify, for the purposes of some Acts and legislative instruments, the content of Australia's obligations, responsibilities and commitments, under the specified international agreements, in relation to the nuclear safeguards to be applied in India.

## 4 Simplified outline of this Act

Authorisations must be granted under particular legislation before nuclear material and nuclear-related items can be exported from Australia.

Australia has obligations under international agreements in relation to safeguards to be applied in countries to which nuclear material and nuclear-related items are exported.

This Act provides that, if particular conditions are met:

- (a) the exercise of powers or performance of functions under particular legislation is taken not to be inconsistent with Australia's obligations; and
- (b) the person exercising powers or performing functions under particular legislation is taken to have had due regard to Australia's obligations, responsibilities and commitments;

under specified international agreements, in relation to the safeguards to be applied in India.

The conditions relate to specific agreements with India which deal with safeguards.

## 5 Definitions

In this Act:

***Australia-India agreement*** means the Agreement between the Government of Australia and the Government of India on Cooperation in the Peaceful Uses of Nuclear Energy done at New Delhi on 5 September 2014, as amended from time to time.

Note: The Agreement is in Australian Treaty Series 2015 No. 9 ([2015] ATS 9) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***export from Australia*** includes supply from a place in Australia to a place outside Australia.

***India-IAEA agreement*** means the following, as amended from time to time:

- (a) the Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities done at Vienna on 2 February 2009;
- (b) the Protocol Additional to the Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities done at Vienna on 15 May 2009.

## Section 6

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Note: The Agreement and Protocol could in 2016 be viewed on the International Atomic Energy Agency website (<https://www.iaea.org>).

**nuclear material** has the same meaning as in the Australia-India agreement.

**nuclear-related item** means any of the following, within the meaning of the Australia-India agreement:

- (a) a component;
- (b) equipment;
- (c) non-nuclear material;
- (d) technology.

**rules** means rules made under section 10.

**specified international agreements** means the following:

- (a) the Treaty on the Non-Proliferation of Nuclear Weapons done at London, Moscow and Washington on 1 July 1968;
- (b) the South Pacific Nuclear Free Zone Treaty done at Rarotonga on 6 August 1985.

Note 1: The Treaty on the Non-Proliferation of Nuclear Weapons is in Australian Treaty Series 1973 No. 3 ([1973] ATS 3) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 2: The South Pacific Nuclear Free Zone Treaty is in Australian Treaty Series 1986 No. 32 ([1986] ATS 32) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

## 6 Act extends to external Territories

This Act extends to every external Territory.

## 7 Act binds the Crown

This Act binds the Crown in each of its capacities.

## 8 Requirements applying to export of nuclear material and nuclear-related items

- (1) If:
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- (a) a power is exercised, or a function is performed, for the purposes of:
  - (i) the *Nuclear Non-Proliferation (Safeguards) Act 1987*;  
or
  - (ii) an Act or legislative instrument prescribed by the rules for the purposes of this subparagraph; and
- (b) the conditions in subsection (3) are met at the time the power or function is exercised or performed;

then, so far as the exercise or performance is in connection with the export from Australia of nuclear material or of a nuclear-related item, it is taken not to be inconsistent with Australia's obligations, under the specified international agreements, in relation to the nuclear safeguards to be applied in India.

(2) If:

- (a) a power is exercised, or a function is performed, by a person for the purposes of:
  - (i) the *Defence Trade Controls Act 2012*; or
  - (ii) the *Customs (Prohibited Exports) Regulations 1958*; or
  - (iii) an Act or legislative instrument prescribed by the rules for the purposes of this subparagraph; and
- (b) the conditions in subsection (3) are met at the time the power or function is exercised or performed;

then, so far as the exercise or performance is in connection with the export from Australia of nuclear material or of a nuclear-related item, the person is taken to have had due regard to Australia's obligations, responsibilities and commitments, under the specified international agreements, in relation to the nuclear safeguards to be applied in India.

(3) The conditions are:

- (a) the Australia-India agreement is in force; and
- (b) the India-IAEA agreement is in force; and
- (c) the person exercising the power or performing the function is satisfied that the nuclear material or nuclear-related item will be subject to safeguards under the India-IAEA agreement if supplied to a place in India.

## Section 9

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- (4) This section applies to the exercise of a power or performance of a function before, on or after commencement of this Act.

## 9 Amendment of the India-IAEA agreement

If the India-IAEA agreement is amended, the Minister must, by notifiable instrument, give notice of the amendment.

## 10 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 9 November 2016  
Senate on 28 November 2016]*

(169/16)

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