

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

*(Presented pursuant to leave granted and read 1<sup>o</sup>,  
2 December 1985)*

(SENATOR SANDERS)

A B I L L  
FOR

An Act to prohibit research into, and the testing of, certain nuclear weapons, nuclear weapons systems and anti-ballistic missile systems in Australia

WHEREAS the carrying out, in Australia, of activities by way of, or related to, research into, and the testing of, nuclear weapons, nuclear weapons systems and anti-ballistic missile systems constitutes a threat to the security of Australia:

5 AND WHEREAS it is in the interests of the defence of Australia that activities of such a kind should not be carried out in Australia:

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

Short title

1. This Act may be cited as the Nuclear Weapons (Research and Testing) Prohibition Act 1985.

### Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

### Interpretation

3. (1) In this Act, unless the contrary intention appears - 5

"anti-ballistic missile systems" means devices designed or intended to destroy, or alter the trajectory of, strategic ballistic missiles while in flight, and includes equipment for transporting and operating these devices and for communicating between the site where they operate and the tactical control post. 10

"Australia" means Australia or an external Territory;

"authority of a foreign country" means -

(a) if the country is a federation - the federal government of the country or the government of a state or province included in the federation; or 15

(b) in the case of any other country - the government of the country,  
for the convenient prosecution of its governmental functions, and wholly owned by the government by which it was so created;". 20

"authority of the Commonwealth" means -

(a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment; 25

5 (b) a body, whether incorporated or unincorporated, established for a public purpose (otherwise than by, or in accordance with the provisions of, an enactment) by the Governor-General or a Minister; or

(c) an incorporated company over which the Commonwealth, or a body referred to in paragraph (a) or (b), is in a position to exercise control;

"Court" means the Federal Court of Australia;

10 "enactment" means -

(a) an Act;

(b) an Ordinance of a Territory; or

15 (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;

"nuclear weapons" means -

20 (a) tactical nuclear weapons and strategic nuclear weapons (including, but without limiting the generality of the foregoing, intercontinental ballistic nuclear missiles, intermediate range ballistic nuclear missiles, and anti-missile nuclear missiles capable of exploding as a result of the energy released by nuclear reactions involving the fission, fusion or fission and fusion of atomic nuclei);

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(b) are serving with an organization that, with the approval of the Commonwealth, is accompanying that visiting force; or

5 (c) are attached to, or are accompanying, that visiting force and, in accordance with the law of the sending country, are subject to the service law of that country,

other than dependants of members of that visiting force or of persons referred to in paragraph (a), (b) or (c).

10 (2) In this Act, unless the contrary intention appears -

(a) a reference to the Commonwealth shall be read as including a reference to an authority of the Commonwealth;

15 (b) a reference to the Government of a foreign country shall be read as including a reference to an authority of that foreign country; and

20 (c) a reference to the Defence Forces of a foreign country shall be read as including a reference to a unit, detachment or other part (including a visiting force) of the Defence Forces of the country.

**Extension to external Territories**

4. This Act extends to every external Territory.



(d) by any person on behalf of the Government, or the Defence Forces, of a foreign country; or

(e) by any other body, whether incorporated or unincorporated, or by any other person,

5 is prohibited absolutely.

### Offences

7. (1) A person shall not engage in, or do any act or thing by way of, or for the purposes of, prohibited testing or prohibited research.

10 (2) Without limiting the generality of sub-section (1), a person shall be taken to engage in prohibited testing or prohibited research -

15 (a) if the person engages another person to carry out, on behalf of that person, any prohibited testing or prohibited research; or

20 (b) if the person makes a contribution to another person for or towards prohibited testing or prohibited research that is being, or is to be, carried out in Australia by or on behalf of that other person.

(3) A person who commits an offence against sub-section (1) is punishable, upon conviction -

25 (a) if the person is a body corporate, an authority of the Commonwealth or an authority of a foreign country -  
by a fine not exceeding \$50,000; or

- (b) in any other case -  
by a fine not exceeding \$10,000 or by imprisonment  
for a term not exceeding 2 years, or both.

**Visiting forces**

8. (1) The Commonwealth shall not enter into an arrangement with a foreign country under which a visiting force of that country is permitted to engage, in Australia, in prohibited testing or prohibited research.

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(2) The Commonwealth shall not grant, under an arrangement between the Commonwealth and a foreign country entered into before or after the commencement of this Act, permission for a visiting force of that country to enter or remain in Australia for the purpose of carrying out prohibited testing or prohibited research.

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**Injunctions**

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9. (1) The Court may, on the application of an approved applicant, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute -

- (a) a contravention of section 5, 6, 7 or 8;
- (b) aiding, abetting, counselling or procuring a person to contravene section 5, 6, 7 or 8;
- (c) inducing, or attempting to induce, a person to contravene section 5, 6, 7 or 8;
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention by a person of section 5, 6, 7 or 8;  
or

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- (e) conspiring with others to contravene section 5, 6,  
7 or 8.

5 (2) Where, in the opinion of the Court, it is desirable to  
do so, the Court may grant an interim injunction pending  
determination of an application under sub-section (1).

(3) The Court may rescind or vary an injunction granted  
under sub-section (1) or (2).

10 (4) Where an application is made to the Court for the grant  
of an injunction restraining a person from engaging in conduct of  
a particular kind, being conduct of a kind referred to in  
sub-section (1), the Court may -

15 (a) if it is satisfied that the person has engaged in  
conduct of that kind - grant an injunction under  
sub-section (1) restraining the person from  
engaging in conduct of that kind; or

20 (b) if, in the opinion of the Court, it is desirable  
to do so - grant an interim injunction under  
sub-section (2) restraining the person from  
engaging in conduct of that kind,  
whether or not it appears to the Court that the person intends to  
engage again, or to continue to engage, in conduct of that kind.

25 (5) Where an application is made to the Court for the grant  
of an injunction restraining a person from engaging in conduct of  
a particular kind, being conduct of a kind referred to in  
sub-section (1), the Court may -

(a) if it appears to the Court that, in the event that  
an injunction is not granted, it is likely that  
the person will engage in conduct of that kind -

grant an injunction under sub-section (1) restraining the person from engaging in conduct of that kind; or

(b) if, in the opinion of the Court, it is desirable to do so - grant an interim injunction under sub-section (2) restraining the person from engaging in conduct of that kind, whether or not the person has previously engaged in conduct of that kind. 5

(6) Where application is made to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages. 10

(7) For the purposes of this section -

(a) in relation to every contravention of section 5, 6, 7 or 8 - the Attorney-General or any other member of the Senate or the House of Representatives; or 15

(b) in relation to a particular contravention of section 5, 6, 7 or 8 - a person whose ordinary place of residence or work is situated in the vicinity of the place where the contravention has occurred or is likely to occur, is an approved applicant. 20

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