

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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Presented and read a first time

*(Foreign Affairs and Trade)*

**WEAPONS OF MASS DESTRUCTION (PREVENTION OF  
PROLIFERATION) BILL 1994**

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## A BILL

FOR

**An Act to prohibit the supply or export of goods that will or may be used in, and the provision of services that will or may assist, the development, production, acquisition or stockpiling of weapons capable of causing mass destruction or missiles capable of delivering such weapons**

The Parliament of Australia enacts:

### **Short title**

**1.** This Act may be cited as the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1994*.

### Commencement

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period. 5

### Interpretation

3. In this Act, unless the contrary intention appears:

“authorised person” means:

- (a) a member of the Defence Force; or 10
- (b) a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; or
- (c) an officer of Customs;

“Biological Weapons Convention” means the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, which was signed on behalf of Australia on 10 April 1972 and a copy of the English text of which is set out in the Schedule to the *Crimes (Biological Weapons) Act 1976*; 15

“Chemical Weapons Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction (including the annexes to that Convention), a copy of the English text of which is set out in the Schedule to the *Chemical Weapons (Prohibition) Act 1994*, as amended by any amendment to that Convention that is accepted by Australia and a copy of the English text of which is set out in regulations in force under that Act; 20 25

“director”, in relation to a body that:

- (a) is incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory; and

- (b) is constituted by one or more members; 30

means the member, or any of the members, constituting the body;

“engage in conduct” includes fail or refuse to engage in conduct;

“export” means export from Australia, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island;

“financial corporation” means a financial corporation, within the meaning of paragraph 51(xx) of the Constitution, formed within the limits of the Commonwealth; 35

“foreign corporation” has the same meaning as in paragraph 51(xx) of the Constitution;

“goods” includes documents; 40

**“Non-Proliferation Treaty”** means the Treaty on the Non-Proliferation of Nuclear Weapons that was signed on behalf of Australia on 27 February 1970, a copy of the English text of which is set out in Schedule 2 to the *Nuclear Non-Proliferation (Safeguards) Act 1987*, and, subject to subsection 4(3) of that Act, includes that Treaty as amended from time to time;

**“non-regulated goods”** means goods that are not prohibited exports under the *Customs Act 1901*;

**“offence against this Act”** includes an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86(1) of that Act because of paragraph (a) of that subsection;

that relates to an offence against this Act;

**“officer of Customs”** has the same meaning as in the *Customs Act 1901*;

**“permit”** means a permit in force under section 13;

**“provide services”** has a meaning affected by section 4;

**“state of mind”**, in relation to a person, includes:

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose;

**“supply”** means supply whether or not for any consideration, and includes supply by way of sale, lease, hire or hire-purchase;

**“trading corporation”** means a trading corporation, within the meaning of paragraph 51(xx) of the Constitution, formed within the limits of the Commonwealth;

**“Weapons of Mass Destruction program”** or **“WMD program”** means a plan or program for the development, production, acquisition or stockpiling of nuclear, biological or chemical weapons or missiles capable of delivering such weapons.

### **Provision of services**

**4.(1)** A reference in this Act to the provision of services includes, without limiting the generality of that expression, a reference to doing anything (other than supplying or exporting goods) that confers a benefit on, grants a right or privilege to, provides a facility for, or otherwise assists, someone, including anything done under:

- (a) a contract for or in relation to the performance of work (including work of a professional nature) with or without the supply or export of goods; or
- (b) a contract for or in relation to the lending of money or other provision of financial assistance.

**(2)** Examples of the provision of services are:

- (a) working as an employee, consultant or adviser; and

- (b) providing training; and
- (c) providing technological information or know-how; and
- (d) procuring another to supply or export goods or provide services.

### **Extension to external Territories**

5. This Act extends to the external Territories.

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### **Object and operation of the Act**

6.(1) The object of this Act is to ensure, so far as the Constitution permits, that goods are not supplied or exported, and services are not provided, in circumstances where the goods will or may be used in, or the services will or may assist, the development, production, acquisition or stockpiling of weapons that are capable of causing mass destruction or missiles that are capable of delivering such weapons.

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(2) This Act has effect, and is to be interpreted, accordingly.

(3) This Act applies to:

- (a) acts and omissions done in Australia or an external Territory; and
- (b) acts and omissions done outside Australia and the external Territories by:
  - (i) Australian citizens; or
  - (ii) people ordinarily resident in Australia or an external Territory; or
  - (iii) bodies incorporated in Australia or an external Territory.

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(4) This Act is additional to, and does not prejudice, the operation of any other Act that deals with a matter dealt with by this Act.

### **Additional operation of the Act**

7.(1) Without prejudice to the effect that this Act has apart from this subsection, it also has the effect that it would have if its application were limited to:

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(a) giving effect to:

- (i) the Biological Weapons Convention; or
- (ii) the Non-Proliferation Treaty; or
- (iii) after the Chemical Weapons Convention comes into force for Australia—that Convention; or
- (iv) any international obligation of Australia arising otherwise than under a Convention or Treaty referred to in a preceding subparagraph; or

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- (b) matters external to Australia; or
- (c) matters of international concern; or
- (d) the defence of Australia; or

(e) goods that are owned by, or are in the possession or control of, a trading corporation or a foreign corporation or services that are provided by a trading corporation, a financial corporation or a foreign corporation; or

5 (f) goods that are, or services that are provided, in the course of trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

10 (iii) within a Territory, between a State and a Territory or between 2 Territories.

(2) Without prejudice to the effect that this Act has apart from this subsection, it also has the effect that it would have if its application were limited to goods that are owned by, or are in the possession or control of, a trading corporation in the course of its trading activities or services that are provided by a trading corporation in the course of its trading activities or by a financial corporation in the course of its financial activities.

### **Act to bind the Crown**

20 **8.(1)** This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in any right liable to be prosecuted for an offence.

25 (3) To avoid doubt, a reference in this section to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

### **Prohibition on supplying goods for WMD program**

**9.(1)** If:

- 30 (a) a person supplies any goods to another person; and  
(b) the first-mentioned person believes or suspects, on reasonable grounds, that the goods will or may be used in a WMD program; and  
(c) the supply of the goods is not authorised by a permit or is in contravention of a condition stated in a permit; and  
(d) the Minister has not given a written notice to the first-mentioned person stating that the Minister has no reason to believe or suspect  
35 that the goods will or may be used in a WMD program;

the first-mentioned person is guilty of an offence punishable on conviction by imprisonment for not more than 8 years.

40 Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) This section has effect subject to subsection 14(7).

### **Prohibition on exporting goods for WMD program**

**10.(1)** If:

- (a) a person exports any non-regulated goods; and
- (b) the person believes or suspects, on reasonable grounds, that the goods will or may be used in a WMD program; and
- (c) the export of the goods is not authorised by a permit or is in contravention of a condition stated in a permit; and
- (d) the Minister has not given a written notice to the person stating that the Minister has no reason to believe or suspect that the goods will or may be used in a WMD program;

the person is guilty of an offence punishable on conviction by imprisonment for not more than 8 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) This section has effect subject to subsection 14(7).

### **Prohibition on providing services for WMD program**

**11.(1)** If:

- (a) a person provides any services to another person; and
- (b) the first-mentioned person believes or suspects, on reasonable grounds, that the services will or may assist a WMD program; and
- (c) the provision of the services is not authorised by a permit or is in contravention of a condition stated in a permit; and
- (d) the Minister has not given a written notice to the first-mentioned person stating that the Minister has no reason to believe or suspect that the provision of the services will or may assist a WMD program;

the first-mentioned person is guilty of an offence punishable on conviction by imprisonment for not more than 8 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) This section has effect subject to subsection 14(7).

### **Request to the Minister for information**

**12. (1)** If a person who wishes to supply goods, to export non-regulated goods or to provide services believes or suspects that the goods will or may be used in, or the provision of the services will or may assist, a WMD



program, the person may request the Minister in writing for information as to whether the Minister has reason to believe or suspect that the goods will or may be used in, or the provision of the services will or may assist, a WMD program.

- 5       (2) If such a request is made, the Minister must, as soon as possible, give the person who made the request a written notice containing the information sought in the request.

**Permits**

**13.(1) If:**

- 10       (a) a person wishes to supply goods to a particular person, to export non-regulated goods to a particular place or to provide services to a particular person; and
- 15       (b) the Minister has reason to believe or suspect that the goods will or may be used in, or the provision of the services will or may assist, a WMD program; and
- 15       (c) the first-mentioned person applies in accordance with the regulations for a permit under this section to supply or export the goods or provide the services; and
- 20       (d) the Minister is satisfied that the supply or export of the goods or the provision of the services in accordance with the application would not be contrary to Australia's international or treaty obligations or the national interest;

the Minister may give the first-mentioned person a written permit to supply or export the goods or provide the services, as the case may be, as mentioned in the permit.

- 25       (2) A permit may be unconditional or subject to conditions stated in the permit.

- 30       (3) If a permit to supply or export goods or provide services was given to a person, the Minister may, by written notice given to the person, revoke the permit if the Minister is satisfied, having regard to any events that have occurred, or any information of which he or she has become aware, since the permit was given, that the supply or export of the goods or the provision of the services, as the case may be, would be contrary to Australia's international or treaty obligations or the national interest.

35       **Notice prohibiting supply or export of goods or provision of services**

**14.(1) If the Minister:**

- (a) has reason to believe or suspect that:
- 40       (i) if a person were to supply particular goods to another person or to export particular non-regulated goods to a particular place, the goods would or might be used in a WMD program; or

(ii) if a person were to provide particular services to another person, the provision of the services would or might assist a WMD program; and

(b) the Minister considers that a permit could not be given under section 13 in respect of such a supply or export of goods or the provision of such services, as the case may be; 5

the Minister may give the person in accordance with the regulations a notice under subsection (2).

(2) The notice may:

(a) prohibit the person from supplying the goods to the other person or exporting the goods to the place concerned, or from providing the services to the other person, as the case requires; or 10

(b) prohibit the person from so supplying or exporting the goods, or so providing the services, unless conditions stated in the notice are complied with. 15

(3) The Minister may revoke, in accordance with the regulations, a notice given under subsection (1).

(4) A notice given to a person under subsection (1) remains in force for a period of 12 months beginning on the day when the notice is given to the person, unless the notice is revoked before the end of that period. 20

(5) The Minister may, in relation to the supply or export of goods, or the provision of services, give a notice to a person under subsection (1) that is to take effect at the time when a previous notice given to the person under that subsection in relation to the supply or export of those goods, or the provision of those services, as the case may be, ceases to be in force. 25

(6) A person must not knowingly supply or export goods or provide services in contravention of a notice, or in contravention of a condition stated in a notice, in force under this section.

Penalty: Imprisonment for 8 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence. 30

(7) In a prosecution for an offence for supplying or exporting goods or providing services in contravention of section 9, 10 or 11, it is a defence if it is proved that the goods were supplied or exported, or the services were provided, in compliance with conditions contained in a notice in force under this section. 35

**Conduct by directors, servants and agents**

**15.(1)** If, in proceedings for an offence against this Act, it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is enough to show:

5       (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

         (b) that the director, servant or agent had the state of mind.

10       **(2)** Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless it proves that it took reasonable precautions and exercised due diligence to avoid the conduct.

15       **(3)** If, in proceedings for an offence against this Act, it is necessary to prove the state of mind of an individual in relation to particular conduct, it is enough to show:

20       (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and

         (b) that the servant or agent had the state of mind.

25       **(4)** Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual unless he or she proves that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

**(5)** If:

30       (a) an individual is convicted of an offence; and

         (b) he or she would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

he or she is not liable to be punished by imprisonment for that offence.

**Injunctions**

35       **16.(1)** If a person has engaged, or is proposing to engage, in any conduct that was or would be an offence against this Act, a court of competent jurisdiction may, on the application of the Minister, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do a particular thing.

40       **(2)** If 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 subsection (1).

(3) The court may discharge or vary an injunction granted under subsection (1) or (2).

(4) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) 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; and 5
- (b) whether or not the person has previously engaged in conduct of that kind.

(5) The power of the court to grant an injunction requiring a person to do a particular thing may be exercised: 10

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
- (b) whether or not the person has previously refused or failed to do that thing.

### **Forfeiture of goods** 15

17.(1) If a person exports or supplies, or attempts to export or supply, goods in contravention of this Act, the goods, and any packages in which they are contained, are forfeited to the Commonwealth.

(2) An authorised person may, without warrant, seize any goods that are forfeited, or that the authorised person has reasonable grounds to believe are forfeited, to the Commonwealth under subsection (1) and take them before a court of summary jurisdiction. 20

(3) If goods are taken before a court of summary jurisdiction under subsection (2), the court must inquire into the matter and:

- (a) if the court is satisfied that the goods are forfeited—must order that the goods be condemned; or 25
- (b) if the court is not so satisfied—must order that the goods be delivered to whoever the court is satisfied is entitled to the goods.

(4) Before inquiring into a matter in accordance with subsection (3), a court of summary jurisdiction may require notice of the inquiry to be given to anyone that the court thinks appropriate. 30

(5) If a prosecution is pending, an order for the condemnation, or for the delivery to a person, of goods relating to the prosecution must not be made until the prosecution is determined.

(6) Goods seized under subsection (2) must be stored in accordance with prescribed procedures until an order is made under subsection (3). 35

(7) Condemned goods must be destroyed or otherwise dealt with in accordance with prescribed procedures as soon as practicable after it is determined that the goods are condemned.

(8) Until they are so destroyed or otherwise dealt with, condemned goods must be stored in accordance with prescribed procedures.

**Evidential certificates by Minister**

5      18. In any proceeding, a certificate given by the Minister stating that notice of a kind mentioned in subsection 14(1) was given to a particular person on a particular date is admissible as evidence of the matters stated in the certificate.

**Delegation by Minister**

10      19. The Minister may delegate to an officer of the Department all or any of the powers conferred on the Minister by this Act other than the power to give or revoke a notice under section 14.

**Attorney-General's consent required for prosecutions**

20. (1) A prosecution for an offence against this Act requires the consent of the Attorney-General.

15      (2) Despite subsection (1):

(a) anyone may be arrested for an offence against this Act, and a warrant for such an arrest may be issued and executed; and

(b) anyone may be charged with such an offence; and

(c) anyone so charged may be remanded in custody or on bail;

20      but no further step in the proceedings referred to in subsection (1) is to be taken until the Attorney-General's consent has been given.

(3) Subsection (2) does not prevent the discharge of the accused if proceedings are not continued within a reasonable time.

**Regulations**

25      21. The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

