Digest of Bill

Purpose
To amend the Patents Act 1952 (the Principal Act) to establish a system for dealing with patent applications that contain information relating to nuclear technology.

Background
The Nuclear Non-Proliferation Act 1987 gave legislative effect to Australia's obligations under the Nuclear Non-Proliferation Treaty, the agreement with the International Atomic Energy Agency and the Convention on the Physical Protection of Nuclear Material. The Act also established a system of permits for the possession and transport of nuclear material. Although Australia does not possess nuclear weapons, nuclear material is used for a number of scientific and medical purposes. If the proposal to allow food irradiation in Australia is accepted, the use and transport of radioactive material will increase. That Act also created the Australian Safeguards Office which is to oversee the permit system and ensure compliance with the Act.

To allow the Safeguards Office to fully perform its functions, this Bill will provide for the reference to the Office of patent applications that deal with nuclear technology.

Main Provisions
Clause 2 will insert a new sub-section 19 (1A) into the Principal Act to require people dealing with information under this Bill not to disclose that information except under the direction of the Director of Safeguards (the Director) or pursuant to a court order. The maximum penalty for a breach of this provision will be a $2000 fine and/or imprisonment for 12 months.

Clause 4 will insert a new section 58AA into the Principal Act. Under the proposed section, associated technology will have the same meaning as in the Nuclear Non-Proliferation (Safeguards) Act 1987 (i.e. a document containing information relating to nuclear plant, equipment or weapons). If it appears that a patent application contains information relating to associated technology, the Commissioner of Patents (the Commissioner) is to notify the Director who may issue a certificate to that effect. If the possession of the information is not in accordance with a permit or authority,
the Director may direct that the patent application should lapse or, if it is an international application, that it not be treated as such an application.

Where such a direction is given to the Commissioner, the application will lapse, or cease to be treated as an international application, though the applicant may apply to the director for the decision to be revoked. Proposed sub-section 58AA(22) provides for the Director to give notice to the Commissioner prohibiting or restricting the publication of information contained in an application in relation to which a certificate has been issued. The Commissioner is to take steps to give effect to the prohibition or restriction and it will be an offence to contravene any directions given (proposed sub-section 58AA(25)).

For further information, if required, contact the Law and Government Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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