Date Introduced: 4 April 1984
House: Senate
Presented by: Senator Chipp, Leader of the Australian Democrats

Short Digest of Bill

Purpose

To prohibit the importation of devices for processing nuclear materials, excepting only equipment permitted to be imported for the Australian Atomic Energy Commission (AAEC) to produce medical and industrial isotopes, for which notice of permission tabled in the Parliament will be required.

Background

The Commonwealth has no general constitutional power which would validate laws prohibiting activities involving nuclear materials. However the power over trade and commerce may be used to achieve secondary effects. For example, a prohibition of the export of products for which no domestic market exists may effectively terminate manufacture or extraction of the product. This situation occurred in the case of sand mining for rutile and zircon on Fraser Island (Murphyores Incorporated Pty. Ltd. v The Commonwealth (1976) 136 CLR 1). The present Bill does not prevent production or use of nuclear equipment in Australia, or the use of earlier imported equipment. There are no reactors in Australia, other than the AAEC reactor at Lucas Heights. Prohibition of importation will effectively prevent establishment or operation of a reactor, or reprocessing of spent reactor fuel.

Main Provisions

The Bill is to be read as one with the Customs Act 1901. A similar provision occurs in section 3 of the Customs Tariff Act 1982.
Clause 6 prohibits importation of "nuclear hardware" into Australia. A sole exception is provided for in sub-clause 6(e). The Minister administering the Atomic Energy Act 1953 may grant permission to the Australian Atomic Energy Agency, to import nuclear hardware which is essential to maintain capacity for, and which is to be used only in, production of isotopes for medical or industrial use.

"Nuclear hardware" is defined in clause 4. The three paragraphs of the clause are drafted to prevent import of equipment for uranium enrichment (paragraph 4(a)), equipment for nuclear reactor construction (paragraph 4(b)) and spent nuclear fuel for reprocessing (paragraph 4(c)). Paragraph 4(c) notably refers to materials rather than equipment. Equipment specifically for reprocessing spent reactor fuel, or for processing plutonium, which is not a "uranium isotope", is not covered by the Bill. Since Australia does not have a commercial reactor, the provision as drafted is sufficient to deny supplies to any Australian reprocessing facility, and to deny any supply of plutonium, an element which does not occur in nature and is obtainable only from spent nuclear fuel.

For further information, if required, contact:

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