

1995

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE

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

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs,
Senator the Hon Gareth Evans QC)

WEAPONS OF MASS DESTRUCTION (PREVENTION OF PROLIFERATION) BILL
1994

SUPPLEMENTARY OUTLINE

The amendments proposed fall into two categories :

- 1) ensuring that there is not a reversal of the onus of proof on one possible element in a prosecution under the legislation, a concern identified by the Senate Standing Committee for the Scrutiny of Bills
- 2) clarifying the meaning of one similar element of sections 9, 10 and 11

On 16 November the Senate Standing Committee for the Scrutiny of Bills circulated comments on the bill, which focused on subsection 14(7) of the bill. The committee questioned the usefulness and appropriateness of the inclusion of this provision in the planned legislation, suggesting in particular that the current wording of this subclause shifts the onus of proof from the prosecution to the defendant on an element of a prosecution for an offence of supplying or exporting goods or providing services to a weapons of mass destruction (WMD) program.

Subsection 14(7) was included in the bill to provide protection for the community against the possibility of a prosecution being mounted against a person even though that person had acted in compliance with conditions specified by the Minister in a notice issued under 14(2)(a). The Government continues to believe such protection should be included in the legislation, but agrees with the Senate committee that the current language for subsection 14(7) could be read as reversing the onus of proof on this one possible element in a prosecution. Accordingly, it is proposed to delete subsection 14(7) from the bill and add provisions to clauses 9, 10 and 11 (the key clauses setting out the principal offences to be created by the bill) making clear that an offence is not committed if the person supplying or exporting goods, or providing a service, in situations covered by the planned legislation acts in compliance with conditions stated in a Ministerial notice issued to that person under subsection 14(2).

In addition, the Government believes it would be desirable to make a further amendment to sections 9, 10 and 11, to clarify an ambiguity in the current draft. There is identical language in the three sections - 9(1)(d), 10(1)(d) and 11(1)(d) - referring to the absence of a written notice by the Minister. The possible confusion relates to the fact that two sections in the legislation, 12 and 14, empower the Minister to issue notices. The amendment would make clear that the reference to a written notice under subsection 9(1)(d), 10(1)(d) and 11(1)(d) is intended to mean only notices issued under section 12 of the bill.

FINANCIAL IMPACT

The amendments will have no financial impact.

NOTES ON CLAUSES

Clause 9 Prohibition on supplying goods for WMD program

1. Subsection 1(d) has been amended to make clear that the ministerial notices referred to are those which would be issued under section 12 of the bill.
2. The new subsection 2 would substitute for the existing subsection 2 and specify that an offence would not be committed under section 9 if a person supplied goods to another person if the goods are supplied in compliance with conditions stated in a ministerial notice given to the first person under subsection 14(2).

Clause 10 Prohibition on exporting goods for WMD program

3. Subsection 1(d) has been amended to make clear that the ministerial notices referred to are those which would be issued under section 12 of the bill.
4. The new subsection 2 would substitute for the existing subsection 2 and specify that an offence would not be committed under section 10 if a person exported goods in compliance with conditions stated in a ministerial notice given to that person under subsection 14(2).

Clause 11 Prohibition on providing services for WMD program

5. Subsection 1(d) has been amended to make clear that the ministerial notices referred to are those which would be issued under section 12 of the bill.
6. The new subsection 2 would substitute for the existing subsection 2 and specify that an offence would not be committed under section 11 if a person provided a service in compliance with conditions stated in a ministerial notice given to the first person under subsection 14(2).

Clause 14 Notice prohibiting supply or export of goods or provision of services

7. The existing subsection (7) would be deleted as a consequence of the amendments outlined in paragraphs 2, 4 and 6 above to sections 9, 10 and 11.



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