Date introduced: 5 June 1986  
House: House of Representatives  
Presented by: Hon. Bill Hayden, M.P., Minister for Foreign Affairs  

DIGEST OF BILL  

Purpose  
To give legislative effect to Australia's obligations under the South Pacific Nuclear Free Zone Treaty.  

Background  
The South Pacific Forum had its origins in a banana and copra growers' consortium. The Forum is comprised of 13 independent States and the first meeting of the Forum was held in Wellington, New Zealand, in 1971. At a meeting of the South Pacific Forum countries at Rarotonga on 6 August 1985, Australia signed the South Pacific Nuclear Free Zone Treaty (the SPNFLZ Treaty). To date nine States have signed the SPNFLZ Treaty (i.e., Australia, Cook Islands, Fiji, Kiribati, New Zealand, Niue, Tuvalu, Western Samoa and Papua New Guinea) and three have ratified the Treaty. Eight States are required to ratify the Treaty before it will come into force. The SPNFLZ Treaty is the first such regional treaty to be concluded since the Latin American Nuclear Free Zone Treaty (the Tlatelolco Treaty) was signed in 1967.  
The SPNFLZ Treaty provides that:  

- no South Pacific country which becomes a party to the Treaty will develop, manufacture, acquire or receive from others any nuclear explosive device;
there should be no testing of nuclear explosive devices in the South Pacific;

there will be no stationing of nuclear explosive devices in the territories of the existing states;

nuclear activities in the region, including the export of nuclear material, will be conducted under strict safeguards to ensure exclusively peaceful, non-explosive use;

South Pacific countries retain their unqualified sovereign rights to decide for themselves such questions as access to their port and airfields by vessels or aircraft of other states;

international law with regard to freedom of the seas will be fully respected;

performance of obligations by parties will be verifiable by international safeguards and through arrangements provided for in the Treaty to resolve any questions about compliance; and

parties to the Treaty will be prohibited from dumping radioactive material at sea within the region and measures to ensure the prevention of the dumping of radioactive material by other states will be taken by the parties.

There are three protocols to the Treaty. The first invites France, the United States and the United Kingdom to apply key provisions of the Treaty to their South Pacific territories. The other two respectively invite the five nuclear weapon States not to use or threaten to use nuclear weapons against parties to the Treaty and not to test nuclear explosive devices within the Zone.

The obligations of the Parties apply to areas over which they have sovereignty and their own actions elsewhere. The Treaty and its Protocols are intended to lead to acceptance by the international community, including the nuclear weapon states, of a zone in the South Pacific which is free of nuclear weapons and where there is no
testing of nuclear explosive devices and no dumping of nuclear wastes.

The Government of Tonga has expressed concern that since the Treaty prohibits signatories from manufacturing, stockpiling or testing nuclear weapons in their respective territories, the future of alliances such as ANZUS will be threatened. The government of the Solomon Islands is concerned that the dumping prohibition is insufficient, while some other South Pacific states, which are reluctant to ratify the Treaty, feel that before China, France, USSR, UK and USA sign the Protocols, the Treaty will be ineffectual.

The next meeting of the South Pacific Forum takes place on 8 August 1986 in Fiji. A pre-Forum conference organised by the Fiji Anti-Nuclear Group have already been working on an alternative to the SPNFZ Treaty. The alternative treaty would ban all visits to the region by nuclear ships and those carrying nuclear weapons, ban the use of surveillance systems that might be targets in a nuclear war and ban the mining and shipping of uranium.

In May 1985 the Australian Democrats introduced a package of six anti-nuclear Bills. The package was comprised of the:

Australian Airspace (Nuclear Weapons Prohibition) Bill 1985
Australian Waters (Nuclear-Powered Ships Prohibition) Bill 1985
Australian Waters (Nuclear Weapons Prohibition) Bill 1985
Customs (Prohibition of Importation of Nuclear Hardware) Bill 1985
Customs (Prohibition of Exportation of Nuclear Materials) Bill 1985
Nuclear Weapons Prohibition Bill 1985

The Government rejected each of the six Bills.

A copy of the SPNFZ Treaty appears as a Schedule to this Bill.
Main Provisions

Part II of the Bill (clauses 8 to 18) provides for the prohibition of nuclear explosive devices. People will be prohibited from:

- manufacturing, producing or acquiring a nuclear explosive device (clause 8);
- engaging in research to manufacture or produce a nuclear explosive device (clause 9);
- possessing or having control of a nuclear explosive device (clause 10);
- facilitating the stationing of a nuclear explosive device (clause 11); or
- testing a nuclear explosive device (clause 12).

Clauses 13 and 14 will extend the above prohibitions beyond Australia in certain circumstances.

A $100,000 fine or 20 years imprisonment or both will be the maximum penalty for people for breaching the above prohibitions (in the case of a company a fine up to $500,000) (clause 16).

It is expressly provided in the Bill that nothing in the Bill will prevent visits to Australia by foreign ships or planes whether nuclear-armed or not (clause 15).

Provisions for safeguards in relation to nuclear material is made by a reference in clause 17 to the Nuclear Non-Proliferation (Safeguards) Bill 1986. The Environment Protection (Sea Dumping) Act 1981 (as amended by the Environment Protection (Sea Dumping) Amendment Bill 1986) is similarly referred to by clause 18 with respect to the prevention of the dumping at sea of radioactive waste.

Part IV of the Bill contains clauses 19 to 29 and deals with inspections. The Minister may declare a person to be a Treaty Inspector for the purposes of the Bill (clause 19). Clauses 21 and 22 will give Treaty Inspectors broad powers to enter premises and vehicles, either with the occupier's consent or by warrant and conduct searches to
investigate a complaint against Australia pursuant to the Treaty or (clause 25) to obtain evidence of the commission of an offence against the Bill. It will be an offence, punishable by a $1000 fine, not to give name and address details to an inspector (clause 24).

An application for a search warrant may be made over the telephone in cases of urgency (clause 26). Where it appears that the concealment or destruction of evidence of an offence having been committed is imminent, an inspector will be able to act without a warrant (clause 27). It will be an offence punishable by a $1000 fine or 6 months imprisonment or both, for an occupier of land or the person in charge of a ship or aircraft not to assist an inspector to conduct a search if so requested (clause 28). Inspectors will be required to carry identity cards which must be produced on request (clauses 28 and 29).

Part V of the Bill (clauses 30 to 34) deals with miscellaneous matters. The Minister will be able to delegate power to an officer of the Department (clause 30). An article which is the subject of an offence against the Bill may be forfeited to the Commonwealth (clause 31). Before a prosecution under the Bill can proceed the Attorney-General's consent must be gained (clause 33). The public may be excluded from proceedings instituted under the Bill (clause 34). The Governor-General may make regulations consistent with the Bill (clause 35).

The Schedule to the Bill contains the South Pacific Nuclear Free Zone Treaty.

This Bill forms part of a legislative package comprising:

Nuclear Non-Proliferation (Safeguards) Bill 1986
(Digest 86/94)
South Pacific Nuclear Free Zone Treaty Bill 1986
(Digest 86/95)
Environment Protection (Sea Dumping) Amendment Bill
1986 (Digest 86/90)

For further information, if required, contact the Science, Technology and Environment Group.

13 August 1986

Bills Digest Service

LEGISLATIVE RESEARCH SERVICE
Reference

Department of Foreign Affairs, Disarmament Newsletter, No. 10, 16 August 1985.

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