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HOUSE OF REPRESENTATIVES

CHEMICAL WEAPONS (PROHIBITION) AMENDMENT BILL 1997

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Foreign Affairs, The Hon Alexander Downer MP)

THE UNIVERSITY OF CHICAGO
PLAZA

CHEMICAL WEAPONS (PROHIBITION) AMENDMENT BILL 1997

OUTLINE

(i) The purpose of the *Chemical Weapons (Prohibition) Amendment Bill 1997 (Bill)* is to refine the administration of the *Chemical Weapons (Prohibition) Act 1994 (Chemical Weapons Act)*, and to rectify certain problems identified during its initial implementation.

(ii) The Chemical Weapons Act gives effect to Australia's obligations as a party to the Convention on the Prohibition on the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction (**Convention**). The Convention bans the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons and provides for the destruction of all existing stocks of chemical weapons. The Chemical Weapons Act creates offences relating to chemical weapons as required under the Convention. It creates the Chemical Weapons Convention Office (**CWCO**) as Australia's national authority pursuant to Article VII of the Convention. It also provides for a statutory officer within the Minister's portfolio (or a nominated departmental officer) to be appointed as the Director of CWCO (**Director**).

(iii) The Convention requires Australia to make regular declarations concerning activities with chemicals listed in three Schedules, and of activities producing discrete organic chemicals. The Chemical Weapons Act allows the CWCO to collect the information required from chemical facility operators to complete these declarations based on a system of permits and notifications. National inspectors appointed under the Chemical Weapons Act have the power to inspect chemical facilities to ensure compliance with obligations imposed by the Act. Certain facilities will also be subject to inspection by the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (**Organisation**), the international organisation established under the Convention. The most comprehensive declaration and inspection requirements apply to Schedule 1 chemicals, with progressively less intensive verification for activities with Schedule 2, Schedule 3 and discrete organic chemicals.

The amendments to the Chemical Weapons Act proposed by this Bill will:

- (a) simplify the compliance obligations for each company or organisation requiring a permit, thereby reducing the possibility of inadvertent breach and providing continuity in its relationship with the CWCO;
- (b) clarify the legislative basis for Australia to implement its obligations effectively under the Convention and subsidiary agreements; and
- (c) correct drafting errors and simplify and improve certain procedures, including those in relation to secrecy.

FINANCIAL IMPACT

The amendments dealt with by the Bill are expected to have no financial impact.

REGULATION IMPACT STATEMENT

Problems and Issues

1. The following problems have been identified with the Chemical Weapons Act:
 - (a) there is potential for non-compliance with permit provisions of the Act where activities of a company fluctuate around permit thresholds. Permit renewal provisions provide for unnecessarily complex compliance and administration requirements;
 - (b) inconsistency and inflexibility in the operation of certain procedures in the Act for gathering information required for declarations under the Convention;
 - (c) an unnecessary requirement for all notifiers to provide reports, so that reports may not be required from certain classes of notifiers; and
 - (d) potential for non-compliance with permit transfer provisions.

Objectives

2. The Bill addresses the following objectives:
 - (a) improve the operation of the Chemical Weapons Act, based on the experience gained in its initial implementation;
 - (b) simplify administration of the Act and improve compliance with it;
 - (c) reduce the administrative burden on industries affected by treaty obligations; and
 - (d) implement Australia's obligations under the Convention more effectively.

Options

3. To the extent that the Bill seeks to introduce changes which should aid compliance with the Chemical Weapons Act, a non-regulatory alternative would be a system of ongoing informal communication between CWCO and relevant companies or organisations. The regulatory options have been identified as mechanisms to automate the process of permit renewal, and to require notification of permit transfers by both parties.

4. Other issues identified above are not suited to non-regulatory treatment.

5. To address the issue identified at 1(b) above, the regulatory option proposed is the consistent use of provisions in either the Chemical Weapons Act, or in regulations, to specify the types of applications, notices and reports that are required to be provided, and their timing. The details of information to be given in those applications, notices or reports are to be set out in forms approved by the Director.

Impact Analysis

6. Approximately 100 Australian companies and organisations may be directly affected by the routine requirements of the Chemical Weapons Act, and all could be affected in a minor way by one or more of the issues identified for analysis. These are mostly companies in the chemical industry, and are located in all mainland states. Around 20 hold permits under the Act, including companies in the chemical, foam rubber and textile industries, as well as several non-commercial organisations.

7. The regulatory measures identified to promote compliance with the Chemical Weapons Act (automation of the permit renewal process) affect all companies and organisations requiring permits, and should produce a modest reduction in the compliance-related administrative burden. The changes should also bring a small reduction in administrative effort for CWCO, however the very small size of that Office provides little opportunity for actual savings to be realised (rather, the changes will enhance the capacity of the Office to meet workload within existing resources).

8. The practical impact for business and government of the identified non-regulatory measures to promote compliance (ongoing informal communication, and the need for businesses to regularly consider whether they may have particular obligations, and to respond to CWCO), is considered to be greater than that of the regulatory proposal which has been identified.

9. The proposal to improve consistency and flexibility in the administration of the Chemical Weapons Act (replace regulations with forms approved by the Director for setting out information required for declarations of past year activities, and for any periodic or special reports), will affect the group of around 20 permit holders referred to above. There should be no additional compliance burden for business from these changes, as the same reporting obligations would normally be applied, whether they are effected through regulations or approved forms. The purpose of the changes is to simplify the task of amending and upgrading reporting requirements as experience develops, which may help to achieve some streamlining in compliance requirements.

10. Around 55 companies in the chemical industry are notionally affected by the proposed removal of certain reporting requirements following the making of a notification under the Chemical Weapons Act. However, the amendment removes an obligation that is not required to meet Australia's treaty obligations, and which has not been enforced to date.

11. All permit holders under the Chemical Weapons Act are potentially affected by proposal to require that the Minister is notified when a permit is no longer needed because of the sale or transfer of a business operation. However, the compliance burden associated with this requirement is assessed as negligible.

Consultation

12. During the preparation of the Bill CWCO wrote to each of the approximately 20 companies and organisations affected by the proposed change in the permit cycle in

the Act, seeking comments on that specific proposal. Comment on other proposals was also invited, from information provided at CWCO's internet site. No response was received in the month in which comments were invited.

13. Two peak bodies of the chemical industry were also consulted, with comments sought on the full range of proposals. A response was provided by the Plastics and Chemicals Industries Association. The response included queries on details of the effect of some proposals, but was supportive of the initiatives overall - especially those which aim to clarify existing uncertainties about technical matters covered by the Chemical Weapons Act. A particular suggestion in that response, dealing with confidentiality of information acquired during any inspection, has been incorporated into the Bill.

Conclusion and Recommended Options

14. The analysis of options has resulted in the following amendments being included in the Bill:

- (a) Replacement of the yearly permit cycle of the Chemical Weapons Act, so that permits may be valid for up to five full calendar years. Provision for facility operators to retain a permit beyond the year in which the permit activity ceased or fell below thresholds;
- (b) Replacement of regulations with approved forms for setting out information required for declarations of past year activities, and for any periodic or special reports;
- (c) Amendment of the requirement for all notifiers to provide reports, so that reports may not be required from certain classes of notifiers; and
- (d) Amendment to permit transfer provisions so that notification must be given by the transferor.

Implementation and Review

15. Effective implementation of amendments will be assisted through the inclusion of information on them in public documents such as the Guide to the Chemical Weapons Convention for Australian Industry that is produced each year, as well as through the internet site of the Chemical Weapons Convention Office. Companies and organisations that are affected by certain amendments will be informed directly of the changes.

16. The Chemical Weapons Convention is a relatively new, and quite complex, instrument. CWCO maintains ongoing review of the mechanisms through which its objectives are implemented. The provisions of the Bill are a direct result of such review, which includes ongoing consultation with affected industry, and industry bodies.

17. Regular reporting on the implementation of the Chemical Weapons Act is included in the annual report of the Director.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

Chemical Weapons Act	: <i>Chemical Weapons (Prohibition) Act 1994</i>
Director	: Director of the Chemical Weapons Convention Office
CWCO	: Chemical Weapons Convention Office
Permit	: Permit granted under the Chemical Weapons Act
Organisation	: Organization for the Prohibition of Chemical Weapons
Convention	: Convention on the Prohibition on the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction

NOTES ON CLAUSES

Clause 1 Short Title

1. This clause provides for the Bill to be cited as the *Chemical Weapons (Prohibition) Amendment Act 1997*.

Clause 2 Commencement

2. This clause provides that Items specified in the clause commence on a day to be fixed by proclamation, except that if not earlier proclaimed they commence on the day that follows a period of 6 months after the Act receives the Royal Assent. The remaining provisions commence on Royal Assent.

Clause 3 Schedules

3. This clause provides that each Act set out in the Schedule is amended as set out in the applicable items in the Schedule.

SCHEDULE 1

Items 1-3 - Definitions

4. Item 1 amends subsection 7(1) the Chemical Weapons Act to include a definition for a *data storage device*, being a medium which may be used for electronic transactions such as permit applications, notifications or reports under that Act.

5. Item 2 amends the definition of *facility agreement* in the Chemical Weapons Act to include an arrangement as well as an agreement. This brings the definition into line with that used in the Convention. In combination with Items 52 and 53 this provides for Australia to enter into a 'facility agreement' as either a treaty status instrument, or as a less-than-treaty status arrangement.

6. Item 3 amends subsection 7(1) of the Chemical Weapons Act so that the definition of a permit includes a permit renewed under new section 19A (see Item 13).

Item 4 - Electronic lodgment

7. Item 4 inserts a new section 8A to provide for applications, notifications or reports under the Chemical Weapons Act to be made in electronic format. The Director may specify associated technical requirements, including requirements for authenticating that an application, notification or report was sent by a particular person, and that its contents are as sent by that person.

Item 5 - Regulations may define *consumption, processing and production* of chemicals

8. Item 5 inserts a new section 8B to provide for regulations to be made defining the precise meanings for the terms *production, processing and consumption*. While these terms have been given definitions in the text of the Convention, their practical application frequently requires clarification. Clarifications may be given formal status through the organs of the Organisation. These need to be able to be effected in legislation so that Australia's Convention obligations can be implemented in an internationally accepted and technically coherent manner.

Item 6 - Regulations may prescribe methods for working out amounts of chemicals

9. Item 6 of the Bill inserts new subsections 10(3) to 10(9) to provide for regulations to prescribe details of the methods by which quantities of chemicals are to be calculated for the purposes of the Act. These amendments ensure that Australia has a sufficient legal basis to compile information for inclusion in declarations required by the Convention. In their absence, the definitions of facilities subject to permit and notification requirements are ambiguous in respect of certain technical issues. Clarification of ambiguities may be given formal status through the organs of the Organisation. The new subsections provide for such clarifications to be given effect, so that Australia's Convention obligations can be implemented in an internationally accepted and technically coherent manner.

10. The amendments relate to the collection of information by CWCO for the purpose of preparing declarations made pursuant to Article VI of the Convention. Issues they address include the need for the ability to:

- (a) apply thresholds on the concentration of a scheduled chemical in a product when determining what facilities require permits;
- (b) determine the basis on which concentration is assessed; and
- (c) clarify what chemical products do or do not fit the definition of a discrete organic chemical.

Items 7 and 8 - Outline of Part 3

11. Items 8 and 9 make consequential amendments to subsections 15(2) and (3) respectively in light of the introduction of the automatic permit renewal mechanism by new section 19A (see Item 13).

Items 9 - 11 - Applications for permits

12. Item 9 amends subsection 17(1) of the Chemical Weapons Act to allow for regulations prescribing the timing of permit applications.

13. Although the amendment made by Item 9 provides for the timing of permit applications to be prescribed, it is probable some applications will not be received in time. The amendment made by Item 11 ensures such applications are valid. In the absence of such a provision, a late application would result in the need for a facility to cease operations for up to a year before a valid application could be made.

14. In the case of a permit application made under section 17 after the prescribed day (see Item 9) the note inserted by Item 11 provides for a form of penalty, such that the Director may name the applicant in the Director's annual report.

Item 12 - Grant of permits

15. Section 18 of the Chemical Weapons Act provides for the Minister to grant a permit after an application has been received, and deals with the period it is in force. The amendment at Item 12 replaces existing subsections 18(2), (3) and (4) with new subsections 18(2), (3) and (4) with the following effect:

- (a) the provisions are made consistent with the automatic permit renewal provisions in new section 19A;
- (b) provisions associated with entry into force of the Convention, and no longer required, are repealed; and
- (c) inappropriate limitations on the year in respect of which a permit may be granted are removed.

Item 13 - Automatic renewal of permits

16. To simplify the administration of the system of permits, Item 13 inserts a new section 19A into the Chemical Weapons Act, which provides for the one year permits granted under section 18 to be automatically renewed at the end of each year, up to a maximum of 4 times. A permit can have effect for 5 years before a renewal application is required to be made.

Items 14 and 15 - Non-automatic renewal of permits

17. Item 14 repeals subsection 20(1) of the Chemical Weapons Act and substitutes new subsections 20(1), (1A) and (1B) to remove the requirement for permit holders to apply to renew their permit each year, and provide for such application to be made once every 5 years. It also provides that a renewal application is not invalid if made late, but that the Director may name the applicant in the Director's annual report.

18. Item 15 makes a consequential amendment to subsection 20(5) in light of new subsection 19A and the amendment of subsection 20(1) (see Items 13 and 14).

Item 16 - Transfer of permits – notification by previous permit holder

19. Item 16 amends the Chemical Weapons Act by inserting new section 24A, which requires a permit holder to notify the Minister if it will no longer be the operator of a permit facility.

Item 17 - Notice of certain decisions

20. Item 17 amends section 26 of the Chemical Weapons Act to include a decision under new subsection 18(3) as to when a permit comes into force as a decision reviewable by the Administrative Appeals Tribunal.

Items 18-20 - When is a notification required?

21. Items 18-20 are consequential amendments to subsection 28(1) and paragraphs 28(2)(a) and 28(4)(a) of the Chemical Weapons Act so they are consistent with the operation of the automatic renewal of permits under new section 19A.

Items 21 and 22 - Production of hydrocarbons or explosives

22. Item 21 amends subsection 28(7) of the Chemical Weapons Act so that clarification of the practical meaning of the exemption for production of hydrocarbons and explosives can be set out in regulations. The effect of the exemption set out in existing subsection 28(7) can lead to results not fully consistent with the object and purpose of the Convention. Clarification of this may be considered by the organs of the Organisation, and can be effected through the regulations.

23. The terms *explosive* and *hydrocarbon* are not defined in the Chemical Weapons Act, or in the Convention. Clarification of these terms may be considered in the organs of the Organisation. Item 22 adds new subsection 28(8) to the Chemical Weapons Act, providing for any clarification to be implemented through regulations.

Items 23 - 25 - Making of notifications required under section 28

24. Item 23 amends subsection 29(1) of the Chemical Weapons Act to allow a notice to be given to CWCO other than in written form, for example in electronic format.

25. Item 24 is a technical drafting amendment to subsection 29(2) of the Chemical Weapons Act, providing for the expression of a regulation prescribing the timing of notifications is in a more readable form and is consistent with expression used in other regulations.

26. Subsection 29(4) of the Chemical Weapons Act is consequentially repealed by Item 25 to ensure consistency with the automatic renewal provision in new section 19A (see Item 13).

Items 26 - 29 - Record keeping and reporting obligations

27. Item 26 repeals subsection 30(1) of the Chemical Weapons Act and inserts a new subsection 30(1), correcting the previous reference to a facility that has been notified to the Minister under section 28 in respect of a particular year. That reference unnecessarily included facilities notified under subsection 28(6) in its coverage, and incorrectly referenced the particular year as the year after the year that relevant activities took place.

28. Items 27 and 28 amend paragraphs 30(2)(a) and 30(2)(c) of the Chemical Weapons Act and insert new paragraph 30(2)(d) to allow for the form and content of reports made pursuant to subsection 30(2) to be defined in an instrument of approved forms, in place of regulations.

29. Subsection 30(5) of the Chemical Weapons Act is repealed by Item 29, consequent to amendments made by Items 27 and 28.

Items 30 and 31 - Routine international compliance inspections of Schedule 1 facilities

30. Item 30 amends subsections 39(2) and 39(3) of the Chemical Weapons Act to remove any implication that the functions of an international inspector during an international compliance inspection are secondary to those of a national inspector.

31. Item 31 inserts a note at the end of section 39 pointing to provisions of the Convention clarifying the obligations of a national inspector in avoiding any delay or hindrance to the conduct of an international compliance inspection which could be occasioned by his/her absence.

Item 32 - Routine international compliance inspections of facilities dealing with Schedule 2 chemicals

32. Item 32 amends paragraph 40(1) of the Chemical Weapons Act to provide for the possibility of an international compliance inspection taking place in the year before that when above-threshold activities are to take place. This change is made to deal with the possibility that a declaration made to the Organisation late in one year (eg. October) of activities anticipated for the following year, could trigger an international compliance inspection before that year has begun.

33. Item 33 amends subsections 40(2) and 40(3) of the Chemical Weapons Act to remove any implication that the functions of an international inspector during an international compliance inspection are secondary to those of a national inspector.

34. Item 34 inserts a note at the end of section 40 pointing to provisions of the Convention clarifying the obligations of a national inspector in avoiding any delay or hindrance to the conduct of an international compliance inspection which could be occasioned by his/her absence.

Items 35 - 37 - Routine international compliance inspections of facilities dealing with Schedule 3 chemicals

35. Item 35 amends subsection 41(1)(a) of the Chemical Weapons Act to provide for the possibility of an international compliance inspection taking place in the year before that when above threshold activities are to take place. This change is made to deal with the possibility that a declaration made to the Organisation late in one year (eg. October) of activities anticipated for the following year, could trigger an international compliance inspection before that year has begun.

36. Item 36 amends subsection 41(2) of the Chemical Weapons Act to remove any implication that the functions of an international inspector during an international compliance inspection are secondary to those of a national inspector.

37. Item 37 inserts a note at the end of section 41 pointing to provisions of the Convention clarifying the obligations of a national inspector in avoiding any delay or hindrance to the conduct of an international compliance inspection which could be occasioned by his/her absence.

Items 38 - 40 - Routine international compliance inspections of OCP facilities

38. Item 38 repeals subsection 42(1) of the Chemical Weapons Act and substitutes a new subsection 42(1) to correct an erroneous reference to the period in which an international compliance inspection may take place, and to more accurately define the possible beginning and end of that period.

39. Item 39 amends subsection 42(2) of the Chemical Weapons Act to remove any implication that the functions of an international inspector during an international compliance inspection are secondary to those of a national inspector.

40. Item 40 inserts a note at the end of section 42 pointing to provisions of the Convention clarifying the obligations of a national inspector in avoiding any delay or hindrance to the conduct of an international compliance inspection which could be occasioned by his/her absence.

Items 41- 44 - Functions of national and international inspectors during an international compliance inspection and a challenge inspection

41. Items 41 and 42 amend section 43 and subsections 47(3) of the Chemical Weapons Act respectively to remove any implication that the functions of an international inspector during a challenge inspection are secondary to those of a national inspector.

42. Item 43 inserts a note at the end of section 47 pointing to provisions of the Convention clarifying the obligations of a national inspector in avoiding any delay or hindrance to the conduct of a challenge inspection which could be occasioned by his/her absence.

43. Item 44 amends subsections 48(4) and (6) of the Chemical Weapons Act to remove any implication that the functions of an international inspector during a challenge inspection are secondary to those of a national inspector.

Items 45-49 - Clarification procedures

44. Item 45 repeals subsection 49(4) of the Chemical Weapons Act and substitutes a new subsection 49(4) to provide a flexible mechanism for determining the modifications to challenge inspection procedures that will be applied during a clarification inspection pursuant to subsection 49(3). The new subsection 49(4) permits the Director to select from a menu of possible modifications set out in the regulations as appropriate for an individual inspection.

45. Items 46 and 47 amend subsection 49(8) of the Chemical Weapons Act to correct reversed references to "another State Party" and "a foreign country" respectively.

46. Item 48 amends subsection 49(10) of the Chemical Weapons Act to provide a flexible mechanism for determining the modifications to challenge inspection procedures that will be applied during a clarification inspection pursuant to subsection 49(10). The amended subsection 49(10) permits the Director to select from a menu of possible modifications set out in the regulations as appropriate for an individual inspection.

47. Item 49 adds new subsection 49(12), which has the effect of requiring the Director to consider the suitability of any modifications determined under new subsections 49(4) and (10) in relation to each individual inspection.

Item 50 - Duration of inspection period

48. Item 50 repeals subsection 53(3) of the Chemical Weapons Act and substitutes new subsections 53(3) and (4) which provide for the regulations to prescribe rules for determining when an international compliance inspection or a challenge inspection starts and ends for the purposes of section 53. The change permits the timely implementation of any clarifications that may be agreed in the organs of the Organisation as to whether certain activities are considered to be inspection activities for the purposes of the timelines set out in the Convention.

Item 51 - Challenge inspection warrant to authorise presence of an observer

49. Item 51 amends section 55 of the Chemical Weapons Act to remove any implication that the functions of an international inspector during an international compliance inspection are secondary to those of a national inspector.

Items 52 and 53 - Facility agreements

50. Items 52 and 53 amend subsections 76(1), (2) and (3) of the Chemical Weapons Act to make them consistent with the definition of *facility agreement* in the Verification Annex of the Convention, and the amended definition in subsection 7(1) (see Item 2). In combination with Item 2 this provides for Australia to enter into a

facility agreement as either a treaty status instrument, or as a less-than-treaty status arrangement.

Item 54 - False or misleading statements and documents

51. Item 54 amends section 80 of the Chemical Weapons Act so that the offence of making a false statement provided for in subsection 80(1) extends to statements made on a data storage device, or by way of electronic transmission.

Item 55 - Annual report by Director

52. To provide for a form of penalty in the event that application for a permit or renewal is made after the prescribed day, Item 55 inserts a new subsection 96(1A). Should the Director consider it warranted, the late applicant may be named in the annual report. (See also Items 11 and 14)

Items 56 - 58 - Register of Permits and Notifications

53. Items 56, 57 and 58 make consequential amendments to subsections 98(2), (5) and (7) respectively in light of the introduction of the automatic permit renewal mechanism by new section 19A (see Item 13).

Item 59 - Privileges and immunities of other persons

54. Item 59 inserts new section 101B into the Chemical Weapons Act to provide for regulations to prescribe privileges and immunities for a wider class of persons, consistent with Australia's obligations under its agreement with the Organisation made under paragraph 50 of Article VIII of the Convention. Most privileges and immunities required by that Agreement can be effected through regulations under the *International Organisations (Privileges and Immunities) Act 1963* (International Organisations Act), but to deal with cases where the coverage of that Act may be insufficient, regulations under the Chemical Weapons Act will be able to be used. Where a person mentioned in the agreement with the Organisation is to have privileges and immunities equivalent to an international inspector, and the scope of the International Organisations Act is insufficient, regulations under the Chemical Weapons Act can be used.

Items 60-71 - Secrecy

55. Item 60 amends subsection 102(1) of the Chemical Weapons Act to introduce the term *eligible person*, being a person who may, in the performance of their duties, need to have access to information acquired in the administration of the Chemical Weapons Act.

56. Item 61 adds "any Commonwealth Officer" to the list of classes of persons who are *eligible persons* for the purposes of section 102 of the Chemical Weapons Act.

57. Item 62 makes a consequential amendment to subsection 102(2) of the Chemical Weapons Act to make it consistent with the adoption of the term *eligible person*.

58. Item 63 amends paragraph 102(2)(a) of the Chemical Weapons Act to focus the scope of section 102 on information that is confidential in nature.

59. Item 64 makes a consequential amendment to paragraph 102(2)(a) of the Chemical Weapons Act to make it consistent with the adoption of the term *eligible person* (see Item 60).

60. Items 65 and 66 amend paragraphs 102(2)(b) and (c) of the Chemical Weapons Act respectively to focus the scope of section 102 on documents and information that are confidential in nature.

61. The penalty in subsection 102(2) of the Chemical Weapons Act is repealed by Item 67.

62. Item 68 makes a consequential amendment to subsection 102(3) of the Chemical Weapons Act to make it consistent with the adoption of the term *eligible person* (see Item 60).

63. Item 69 inserts new subsections 102(3A), (3B), (3C) (3D) and (3E) into the Chemical Weapons Act to provide protection for any confidential information gathered through the administration of the Act which needs to be passed to a person other than an *eligible person* (see Item 60) for the purposes of the Act, or for the purpose of complying with Australia's obligations under the Convention. That person may not make a record of the information or divulge or communicate it to any person or court, unless it is necessary for the purposes of the Act, or for the purpose of a prosecution for an offence against the Act.

64. Item 69 also inserts new subsection 102(3E) to provide for a penalty for offences against section 102 of the Chemical Weapons Act.

65. Item 70 inserts new subsections 102(4A) and (4B) into the Chemical Weapons Act, which provide that any information or document acquired by an *eligible person* in the course of an inspection under Part 5 of the Act is taken to be confidential for the purposes of section 102, unless the information or document is already available to the public, or the person to whom it relates indicates that it is not confidential.

66. Item 71 amends subsection 102(5) of the Chemical Weapons Act to define the meaning of the term *Commonwealth Officer* used in section 102 (see Item 61).

Item 72 - Application of amendments – sections 17 and 96 of the *Chemical Weapons (Prohibition) Act 1994*

67. Item 72 provides for arrangements in relation to any applications under sections 17 of the Chemical Weapons Act made after the commencement of Item 72.

Item 73 - Application of amendments – section 18 of the *Chemical Weapons (Prohibition) Act 1994*

68. Item 73 provides for arrangements in relation to any permit granted under section

18 of the Chemical Weapons Act after the commencement of Item 73.

Item 74 - Application of amendments – section 53 of the *Chemical Weapons (Prohibition) Act 1994*

69. Item 74 provides for transitional arrangements for the repeal of subsection 53(3) (which deals with determining when an inspection begins and ends) of the Chemical Weapons Act in relation to an international compliance inspection or challenge inspection.

Item 75 - Application of amendments – section 102 of the *Chemical Weapons (Prohibition) Act 1994*

70. Item 75 provides for the amendments to subsections 102(1), (2) and (3) in the Chemical Weapons Act to have effect only in relation to information acquired or documents given after the commencement of Item 75.

