

1993

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

CHEMICAL WEAPONS (PROHIBITION) BILL 1993

EXPLANATORY MEMORANDUM

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

CHEMICAL WEAPONS (PROHIBITION) BILL 1993

OUTLINE

The purpose of this Bill is to give effect to Australia's obligations as a party to the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. The Convention opened for signature on 13 January 1993 and is expected to enter into force in 1995. Australia has signed the Convention but has not yet ratified it.

The Convention bans for all time 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 Bill creates offences relating to chemical weapons which Australia is required to establish under the Convention, for which there is a penalty of life imprisonment.

Under Article VI of the Convention a State Party has the right to produce or use toxic chemicals and their precursors for activities not prohibited under the Convention. However, in order to deter diversion of such chemicals to a clandestine chemical weapons program, the Convention provides for a stringent verification regime involving declarations and initial and annual declarations and inspections, which will be conducted by inspectors of the Organization for the Prohibition of Chemical Weapons, based in The Hague, which will implement the Convention.

The Bill establishes a system of permits for the production or use above specified thresholds of chemicals listed in three schedules in Annex 1 to the Convention. The permits will be issued by the Minister who will have the power to impose conditions on the permit, including a requirement for facilities to provide information to the Chemical Weapons Convention Office for declarations to be made by Australia in accordance with its obligations under the Convention. The Office, which will implement the Convention in Australia, will be established as a non-statutory body within an existing organisation within the Minister's Portfolio.

Facilities which produce above specified thresholds discrete organic chemicals, which are not contained in the three schedules, are required to notify the Office accordingly and provide information about their level of production for inclusion in declarations made to the Organization.

The Bill authorises the Director of the Chemical Weapons Convention Office to appoint national inspectors who will have powers of inspection set out in the Bill. The Minister will also have the power to declare inspectors of the Organization to be "Organization inspectors" under the legislation. Australia is under an obligation to allow Organization inspectors to inspect routinely declared facilities, and any place in Australia or the external Territories in a challenge inspection. Access to facilities by inspectors for routine or challenge inspections is by consent of the occupier or by warrant issued by a magistrate. Access will be in accordance with any facility agreement in force at the inspected facility and with the managed access provisions contained in the Convention to protect sensitive commercial technology or national security interests.

The Bill sets out procedures for dealing with requests for clarification by another State Party about possible non-compliance with the Convention at some location in Australia. Under these procedures, arrangements may be made with the other State Party for a bilateral inspection of the premises in question, with the agreement of the owner of the premises. The Minister may declare an inspector representing the other State Party to be a "foreign country inspector".

FINANCIAL IMPACT

When the Convention enters into force, Australia will be required to make contributions to the Organization in respect of its operations, which will be calculated on the basis of the adjusted UN scale of contributions. The Preparatory Commission has not yet addressed the size of the budget for the Organization but a very early estimate indicates Australia's annual contribution may be about \$1.7 million.

The cost of operating a Chemical Weapons Convention Office is estimated at \$250,000 per year.

NOTES ON CLAUSES

Clause 1 Short Title

1. This clause provides for the Act to be cited as the *Chemical Weapons (Prohibition) Act 1993*.

Clause 2 Commencement

2. Sections 1 and 2 of the Act commence on the day on which this Act receives the Royal Assent and that the remaining provisions of the Act commence on a day or days to be fixed by proclamation or, if not earlier proclaimed, on the day the CWC enters into force. However, provisions in Part 5 permitting international compliance inspections of OCP facilities are not to operate earlier than the third anniversary of the CWC's entry into force. This accords with a provision of the Convention which defers inspections of those facilities until at least the fourth year after the Convention's entry into force.

Clause 3 Object of Act

3. The object of the Act is to give effect to Australia's obligations as a party to the CWC.

Clause 4 Extension to external Territories

4. The Act extends to Australia's external Territories.

Clause 5 Extra-territorial operation of the Act

5. The Act extends to acts done or omitted to be done by an Australian citizen outside Australia and the external Territories. It gives effect to the provision in Article VII of the CWC which requires a party to the Convention to prohibit its citizens anywhere from undertaking activities which are prohibited by the Convention.

Clause 6 Act binds the Crown

6. This clause provides that the Act binds the Crown in all its capacities but the Crown will not be liable to be prosecuted for an offence.

Clause 7 Definitions

7. This clause provides definitions for terms used in the Act. It also provides that, unless the contrary intention appears, where an expression is used in the Act and in the Convention, the expression shall have the same meaning in the Act as it does in the Convention.

Clause 8 Approved forms and approved procedures

8. This clause provides that a reference to an approved form or procedure is a reference to a form or procedure approved by the Director which is subject to disallowance by Parliament under section 46A of the *Acts Interpretation Act 1901*.

Clause 9 Conduct by directors, servants and agents

9. This clause provides that where it is necessary to establish the state of mind of a body corporate for the purposes of this Act, the state of mind or conduct of a director, servant or agent of a body corporate shall be deemed to be the state of mind or conduct of the body corporate, provided the Director, servant or agent acts within his or her authority. Similarly, a person shall be attributed with the state of mind or conduct of his or her servant or agent.

Clause 10 Determining aggregate amounts of chemicals

10. This clause provides that where any particular quantity of a Schedule 1 or a Schedule 2 chemical is subjected to more than one activity within a facility, it is not counted more than once in information provided by the facility to the Director.

Clause 11 Application of Act

11. This clause sets out the constitutional basis for the legislation. The constitutional powers on which the legislation is based relate to external affairs, foreign and trading corporations, Territories, trade and commerce with other countries and among the States and Commonwealth authorities and instrumentalities.

PART 2 - OFFENCES RELATING TO CHEMICAL WEAPONS**Clause 12 Offences relating to chemical weapons**

12. This clause makes it an offence for a person, intentionally or recklessly, to develop, produce, otherwise acquire, stockpile, retain, transfer or use chemical weapons; engage in military preparations to use chemical weapons; or assist, encourage or induce, in any way another person to engage in any activity prohibited to a State Party under the Convention. It also makes it an offence to use riot control agents as a method of warfare but not for riot control or law enforcement purposes. The penalty for these offences is life imprisonment.

Clause 13 Notification of finding of substances or articles believed to be chemical weapons

13. This clause provides that a person who finds a substance or article, which he or she believes may be a chemical weapon, to notify the Director or a constable of the finding, and of the whereabouts, of that substance or article. If the person notifies a constable, the constable is required to notify the Director. It is an offence for a person not to notify the Director or a constable. Penalty: imprisonment for one year.

Clause 14 Forfeiture and seizure of chemical weapons

14. This clause provides for the forfeiture to the Commonwealth of any chemical weapon that is developed, produced, otherwise acquired, stockpiled, retained or transferred in contravention of clause 12.

15. This clause also provides for the seizure by a constable, without warrant, of any substance or article forfeited to the Commonwealth or which the constable has reasonable grounds for believing has been forfeited to the Commonwealth as a chemical weapon. The article must then be taken to a court of summary jurisdiction for decision as to whether it is a forfeited article or should be returned to a person entitled to have it. A seized chemical weapon must be stored and, if ordered, destroyed in accordance with approved procedures as soon as practicable after it has been determined that it has been forfeited to the Commonwealth.

PART 3 - PERMITS AND NOTIFICATIONS CONCERNING CERTAIN FACILITIES

Clause 15 Outline of this Part

16. This clause provides an outline of this Part of the Bill.

Division 1 - Permits

Clause 16 When is a permit required?

17. This clause specifies the circumstances where the operator of a facility requires a permit to operate the facility in a particular year. The circumstances differ according to type of chemical and type of activity. A facility requires a permit if, in the year:

- (a) it produces, acquires, retains, uses or transfers any amount of a Schedule 1 chemical (other than excluded Schedule 1 chemicals);
- (b) it produces, processes or consumes a Schedule 2 chemical above the Schedule 2 permit threshold; or
- (c) a plant within the facility produces more than 30 tonnes of a Schedule 3 chemical.

Clause 17 Applications for permits

18. This clause sets out the procedures for applications for permits. These procedures provide for a person to apply to the Minister by giving the Controller an application. The Controller, once he or she is satisfied with the information, including any additional information sought and received, must make a report and recommendation to the Minister.

Clause 18 Grant of permits

19. This clause provides for the grant of a permit. The Minister, after considering the Controller's report, may grant or refuse to grant a permit with such conditions as are specified in the permit. It is granted for one year only but may be renewed. If granted after the commencement of a year, it will be taken to have been in force for the full year, except in the year in which clause 16 commences when it will be taken to have been in force from the commencement of that clause. The conditions of the permit only apply from the date of the permit in any year. A permit does not make it lawful to do anything that is unlawful under other laws of the Commonwealth, State or Territory.

Clause 19 Special considerations relating to permits for the operation of facilities in respect of Schedule 1 chemicals

20. This clause specifies the four different types of facilities in respect of the production, acquisition, use, retention or transfer of Schedule 1 chemicals for which permits may be issued. Schedule 1 chemicals may be applied to protective, research, medical or pharmaceutical purposes according to the type of facility. Limits on the production of Schedule 1 chemicals also differ among the four types of facilities.

21. A single small-scale facility may be authorised to produce Schedule 1 chemicals to be applied to any of the four permitted purposes. Limits apply to the configuration and size of reaction vessels that may be used at this facility.

22. One protective facility may be authorised to produce up to and including 10 kilograms of Schedule 1 chemicals for protective purposes.

23. One or more research facilities may be authorised to produce an amount not exceeding 10 kilograms of Schedule 1 chemicals for research, medical or pharmaceutical purposes.

24. One or more consumption facilities may be authorised to acquire, use, retain or transfer, but not produce, Schedule 1 chemicals for any of the four permitted purposes.

25. The national aggregate of Schedule 1 chemicals at any one time and Australia's acquisition of Schedule 1 chemicals in any year, through production or transfer, must not exceed one tonne.

Clause 20 Renewal of permits

26. This clause sets out the procedures for applications for renewal of permits. These procedures provide for a person to apply to the Minister by giving the Controller a renewal application within a prescribed time. The Controller, once he or she is satisfied with the information, including any additional information sought and received, must make a report and recommendation to the Minister.

Clause 21 Renewals not able to be dealt with within time

27. This clause provides that if an application for a renewal of a permit has not been finally determined before the start of the year, the Act will have effect, as if the permit had been renewed, until the application has been determined. The renewed permit is also taken to have been in force for the whole of the year to which it relates.

Clause 22 Conditions relating to a permit facility

28. This clause provides that an operator of a permit facility must comply with the terms of any facility agreement; the restrictions imposed on the transfer of scheduled chemicals to non-State Parties; and the conditions, consistent with Australia's obligations under the Convention, as are set out in the permit.

Clause 23 Variation of permits

29. The Minister, by written notice, may vary a permit and that the variation takes effect on the day the notice is given to the permit holder or on a later day specified in the notice.

Clause 24 Transfer of permits

30. This clause provides that a person, other than the permit holder, who will become the operator of a facility, may apply to the Minister for the transfer of the permit to him or her. If the Controller is satisfied with the application, including any additional information sought and received, he or she must give a report to the Minister with a recommendation as to whether the permit should be transferred. After considering the Controller's report, the Minister may grant or refuse to grant the application for transfer. If a permit is transferred, all dealings with a chemical by the previous permit holder will be regarded as dealings with the chemical by the new permit holder but no breach of the Act or regulations by the previous permit holder will be taken to be a breach of the Act or regulations by the new permit holder.

Clause 25 Revocation of permit

31. This clause provides that the Minister may, in writing, revoke a permit if the permit holder or a person acting on his or her behalf is convicted of an offence under the Act or regulations made under the Act; contravenes a condition of the permit; or contravenes the Customs (Prohibited Exports) Regulations or the Customs (Prohibited Imports) Regulations so far as the exportation or importation of a scheduled chemical is concerned. This provision extends to a conviction or contravention because of an act that occurs outside Australia.

32. The Minister must revoke a permit if the permit holder asks the Minister, in writing, to do so.

Clause 26 Notice of certain decisions

33. The Minister must give notice in writing of a decision and of the reasons for the decision not later than 30 days after the day on which the decision is made, in respect of decisions made by the Minister refusing to grant, renew or transfer a permit; revoking a permit, imposing a condition on a permit; or if a person requires the approval or consent of a person specified in the permit in respect of the doing of an act or thing and the person makes a decision refusing to give such an approval or consent. A notice must include a statement that the person may apply to the Administrative Appeals Tribunal for a review of the decision.

Clause 27 Review of decisions

34. This clause provides that an application may be made to the Administrative Appeals Tribunal for review of a decision covered by clause 26.

Division 2 - Notifications

Clause 28 When is a notification required?

35. The operator of a Schedule 1, 2 or 3 facility must notify the facility to the Minister in the year following that for which a permit had been issued to the facility, if in that following year there is no requirement for the issue of a permit under clause 16.

36. The operator of an OCP (other chemical production) facility must notify the facility to the Minister if it produced more than 200 tonnes of unscheduled discrete organic chemicals during the year before the notification, or a plant within the facility produced during that year more than 30 tonnes of a particular unscheduled discrete organic chemical that contained one or more of the elements phosphorus, sulphur or fluorine.

Clause 29 Making notifications required under section 28

37. This clause provides that a person must notify a facility referred to in clause 28 to the Minister by giving the Controller written notice in an approved form at a prescribed time.

38. It is offence not to notify the Minister, without reasonable excuse, in accordance with the requirements of clause 28. Penalty: imprisonment for one year.

PART 4 - RECORD KEEPING AND INFORMATION GATHERING

Clause 30 Record keeping obligations in relation to certain facilities

39. This clause sets out the particulars which the operator of a facility, for which a permit has been issued or which has been notified to the Minister during a particular year, must give to the Director in a form and at such intervals as are prescribed. The particulars relate to the location, ownership and operation of the facility; the plant or plants comprising the facility; the chemicals dealt with at the facility and the purposes to which they are put; and other matters relevant to declarations made by Australia to the Organization.

40. The clause also provides that the operator must keep such records and provide to the Director such reports as are required by regulations.

41. It is an offence to refuse or fail to comply with these requirements, without reasonable excuse. Penalty: imprisonment for two years.

Clause 31 Director may seek information for declarations and consultation purposes

42. Australia is obliged under the Convention to make an initial declaration within 30 days of the Convention's entry into force and then annual declarations to the Organization in respect of certain particulars of the activities of Schedule 1, Schedule 2, Schedule 3 and OCP facilities as part of the Convention's verification regime. This clause empowers the Director to obtain information and documents that are relevant to a declaration from those facilities and compels those facilities to comply with such requests for information or documents.

PART 5 - VERIFICATION PROCEDURES

Clause 32 Outline of this Part

43. This clause provides an outline of this Part of the Bill.

Division 1 - Compliance inspections by national inspectors

Clause 33 Compliance purpose

44. This clause sets out the purposes for which national inspectors may conduct compliance inspections at declared facilities, namely: the facility's compliance with the Act and regulations; the facility's compliance with the conditions of its permit; the absence of any Schedule 1 chemical at a Schedule 2 or 3 facility or an OCP facility; and ensuring the proper functioning of monitoring equipment installed at the facility during an international compliance inspection or under a facility agreement.

Clause 34 Inspection powers

45. A national inspector may exercise the following inspection powers during a compliance inspection of a declared facility: search the facility; inspect or examine, take samples of or measure a matter or thing; examine or take extracts of or copy documents; and operate equipment, including electronic equipment, located at the facility if he or she believes that the equipment can be operated without damaging it. Inspection powers may only be exercised in accordance with safety procedures applicable at the facility.

Clause 35 Compliance inspections by national inspectors

46. A national inspector may enter a declared facility with the consent of the occupier or under a warrant issued by a magistrate to exercise inspection powers for a compliance purpose. A national inspector may not exercise inspection powers if he or she fails to provide, on request, his or her identity card. The incidence of inspections of different types of declared facilities may be specified in the regulations.

Clause 36 Period within which compliance inspections may be carried out

47. This clause restricts compliance inspections to the period of a facility agreement or, where a facility does not have a facility agreement, during a permit or notification year in relation to that facility or during the following year.

Division 2 - International compliance inspections

Clause 37 International compliance purpose

48. This clause sets out the purposes for which a national inspector, accompanied by an Organization inspector, may conduct international compliance inspections at declared facilities, namely: the facility's compliance with the Act and regulations; the facility's compliance with the conditions of its permit; the absence of any Schedule 1 chemical at a Schedule 2 or 3 facility or an OCP facility; ensuring the proper functioning of monitoring equipment installed

at the facility during an international compliance inspection or under a facility agreement and facilitating an inspection of a declared facility by an Organization inspector in accordance with the Convention and any applicable facility agreement.

Clause 38 International inspection powers

49. This clause sets out the international inspection powers which may be exercised by a national inspector, accompanied by an Organization inspector, during a compliance inspection of a declared facility: search the facility; take photographs (including video recordings) or make sketches; inspect or examine, take samples of or measure a matter or thing; examine or take extracts of or copy documents; operate equipment, including electronic equipment, located at the facility if the national inspector believes that the equipment can be operated without damaging it; and take onto a facility equipment approved by the Organization. Inspection powers may only be exercised in accordance with safety procedures applicable at the facility.

Clause 39 Routine international compliance inspections of Schedule 1 facilities

50. This clause authorises a national inspector and an accompanying Organization inspector, subject to any facility agreement or arrangements for managed access, to enter a declared Schedule 1 facility with the consent of the occupier or under a warrant issued by a magistrate to exercise international inspection powers for an international compliance purpose. Continuous monitoring equipment may be installed and operated at the facility in accordance with safety procedures.

Clause 40 Routine international compliance inspections of facilities dealing with Schedule 2 chemicals

51. This clause provides that an international inspection may be carried out at a Schedule 2 facility if a plant within the facility is likely to produce, process or consume during that year a quantity of a Schedule 2 chemical which is more than 10 times the Schedule 2 permit threshold; or produced, processed or consumed during any of the 3 years before that year a Schedule 2 chemical which was more than 10 times the Schedule 2 permit threshold.

52. If a Schedule 2 facility is subject to inspection, the clause authorises a national inspector and an accompanying Organization inspector, subject to any facility agreement or arrangements for managed access, to enter the facility with the consent of the occupier or under a warrant issued by a magistrate to exercise international inspection powers for an international compliance purpose. Monitoring equipment may be installed and operated at the facility in accordance with safety procedures for the duration of the inspection.

Clause 41 Routine international compliance inspections of facilities dealing with Schedule 3 chemicals

53. This clause prescribes the production thresholds above which a Schedule 3 facility becomes subject to an international compliance inspection. The threshold is likely production during the permit year, or production during the preceding year, at the facility of 200 tonnes of any Schedule 3 chemical, provided that at least one plant within the facility produced more than 30 tonnes of that chemical.

54. If a Schedule 3 facility is subject to inspection, the clause authorises a national inspector and an accompanying Organization inspector, subject to any facility agreement or arrangements for managed access, to enter the facility with the consent of the occupier or under a warrant issued by a magistrate to exercise international inspection powers for an international compliance purpose.

Clause 42 Routine international compliance inspections of OCP facilities

55. This clause provides that an international compliance inspection of an OCP facility may be carried out during a year that follows a notification of that facility to the Minister.

56. The clause authorises a national inspector and an accompanying Organization inspector, subject to any facility agreement or arrangements for managed access, to enter the facility with the consent of the occupier or under a warrant issued by a magistrate to exercise international inspection powers for an international compliance purpose.

Clause 43 Inspectors not entitled to exercise powers under this Division in certain circumstances

57. A national inspector and an accompanying international inspector may not exercise challenge inspection powers if, on request, either the national inspector fails to provide his or her identity card or the Organization inspector fails to provide written proof of his or her identity.

Clause 44 Incidence of routine international compliance inspections

58. The regulations may specify the incidence of routine international inspections of the different kinds of declared facilities.

Division 3 - Challenge inspections

Clause 45 Challenge inspection purposes

59. Any State Party has the right to request the Organization to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of the Convention. The inspected State Party is obliged to give access to an Organization inspector to the requested site. This clause provides that a reference to a challenge inspection purpose is a reference to the purpose of facilitating a challenge inspection in accordance with Article IX of the Convention and any applicable facility agreement in respect of a declared facility.

Clause 46 Challenge inspection powers

60. A national inspector, accompanied by an Organization inspector, may exercise the following challenge inspection powers during a challenge inspection of the inspection site: search the site; take photographs (including video recordings) or make sketches; monitor the exit of all vessels, aircraft or vehicles (other than personnel or personal vehicles); inspect or

examine, take samples of or measure a matter or thing; examine or take extracts of or copy documents; question personnel working on the site; verify the proper functioning or calibration of any on-site monitoring equipment; operate equipment, including electronic equipment, located at the site if the national inspector believes that the equipment can be operated without damaging it; and take onto a site equipment approved by the Organization. Inspection powers may only be exercised in accordance with safety procedures applicable at the site.

Clause 47 Challenge inspections

61. This clause provides that the Minister may declare a challenge inspection and a challenge inspection site for the purposes of the Act in Australia or an external Territory.

62. A national inspector and an accompanying Organization inspector may, subject to any facility agreement or arrangements for managed access, enter a challenge inspection site with the consent of the occupier or under a warrant issued by a magistrate to exercise challenge inspection powers for a challenge inspection purpose. A national inspector and an accompanying international inspector may not exercise challenge inspection powers if, on request, either the national inspector fails to provide his or her identity card or the Organization inspector fails to provide written proof of his or her identity.

Clause 48 Observers

63. The Convention provides for an observer representing the State Party requesting the challenge inspection to accompany the Organization inspection team on a challenge inspection. This clause provides that the Minister must declare a person to be an observer for the purposes of the Act if the Minister is satisfied that the person has been designated by the inspecting State Party as the observer. The observer may accompany the national and Organization inspectors on the inspection unless the occupier requests that the observer be excluded from the site or any particular part of the site and the observer is given notice in writing to that effect by the Director. An observer may not enter the site if he or she fails to provide, on request, proof of his or her identity.

Clause 49 Clarification procedures

64. A State Party, rather than institute a challenge inspection, may seek clarification from another State Party, directly or through the Organization, concerning the question whether there has been a breach of the Convention at particular premises.

65. In such circumstances, the Director may, with the consent of the owner or manager of the premises, give his or her counterpart in the State Party seeking clarification, information or documents concerning relevant activities of the premises to try to clarify the other State Party's concerns.

66. The Director may conduct an inspection of the premises in the same manner as for a challenge inspection without Organization inspectors, subject to any modifications as are prescribed. After the inspection, the Director may, with the consent of the owner or manager of the premises, report the results of the inspection to the State Party seeking clarification.

67. The Director may, with the agreement of the owner or manager of the premises, arrange with his or her counterpart in the State Party seeking clarification, to conduct a joint inspection of the premises with foreign country inspectors nominated by the other State Party. The Minister may declare a person to be a foreign country observer for the purposes of the Act if the Minister is satisfied that the person has been designated by a State Party to be a foreign country inspector. The inspection may be conducted in the same manner as a challenge inspection subject to such modifications as are prescribed.

Division 4 - Warrants relating to compliance and challenge inspections

Clause 50 Compliance inspection warrants

68. This clause provides for the issue to a national inspector of a compliance inspection warrant if a magistrate is satisfied that it is reasonably necessary to exercise inspection powers for a compliance purpose. The terms of the warrant must include a description of the premises; the name of the national inspector responsible for executing the warrant; the period of the warrant; the hours of entry and the purpose of the entry.

Clause 51 International compliance inspection warrants

69. This clause provides for the issue to a national inspector of an international compliance inspection warrant if a magistrate is satisfied that it is reasonably necessary to exercise international inspection powers for an international compliance purpose. The terms of the warrant must include a description of the premises; the name of the national inspector responsible for executing the warrant; the period of the warrant; the period for which the inspection team is entitled to be on the premises in accordance with clause 53; and the purpose of the entry.

Clause 52 Challenge inspection warrants

70. This clause provides for the issue to a national inspector of a challenge inspection warrant if a magistrate is satisfied that it is reasonably necessary to exercise challenge inspection powers for a challenge compliance purpose. The terms of the warrant must include a description of the premises; the name of the national inspector responsible for executing the warrant; if there has been no prior entry by consent, the period within which, in accordance with the Convention, entry under warrant must be effected; the period for which the inspection team is entitled to be on the premises in accordance with clause 53; and the purpose of the entry.

Clause 53 Duration of inspection period

71. This clause provides for the maximum period for an international compliance inspection of Schedule 2, Schedule 3 and OCP facilities and for challenge inspections unless a longer period is authorised by the Minister. The clause also defines the start and finish of the period of inspection.

Clause 54 Ministerial extension of inspection periods

72. This clause provides for the Director to apply for an extension of the period of an international compliance inspection or a challenge inspection and for the Minister to authorise an extension if satisfied with its justification. A copy of the notice of extension must be given to the occupier of the facility and, if entrance had been gained by warrant, to the magistrate who issued the warrant.

Clause 55 Challenge inspection warrant to authorise presence of an observer

73. This clause provides for a challenge inspection warrant to authorise, subject to any restrictions under sub-clause 48(5), an observer to accompany a national inspector during a challenge inspection.

Division 5 - Offence-related searches and seizures**Clause 56 Interpretation**

74. Definitions of terms used in this Division.

Clause 57 Offence-related searches and seizures

75. This clause provides that if a national inspector has reasonable grounds for suspecting there may be evidential material on any premises, he or she may enter those premises with the consent of the occupier or under a warrant issued by a magistrate, to search for evidential material and seize any found on the premises. A national inspector may not exercise inspection powers if he or she fails to provide, on request, his or her identity card.

Clause 58 Offence-related warrants

76. A warrant may be issued by a magistrate upon information on oath if the magistrate considers there are reasonable grounds for suspecting there is, or may be within 72 hours, any evidential material at the premises. A warrant must not be issued if a national inspector has not given the magistrate additional information sought by the magistrate. The warrant must state the offence; describe the premises and the evidential material the subject of the search; the name of the national inspector executing the warrant; the duration of the warrant and whether entry may be effected at any time or during specified hours.

77. The warrant should also provide for the seizure of a thing which is not the evidential material described in the warrant but which the national inspector or person assisting believes on reasonable grounds to be evidential material in relation to the offence stated in the warrant or a thing relevant to another offence under the Act.

Clause 59 The things that are authorised by search warrant

78. This clause specifies the things that are authorised by a search warrant, namely, that a national inspector and a person assisting may enter the warrant premises, seize evidential material specified in the warrant and other material believed to be evidential material in relation to an offence against the Act which the national inspector or person assisting believes,

on reasonable grounds, to be necessary to prevent their concealment, loss or destruction. An inspection must be conducted in accordance with safety procedures applicable at the facility and during the hours specified in the warrant.

Clause 60 Specific powers available to national inspectors executing warrants

79. This clause sets out specific powers available to a national inspector or a person assisting relating to the conduct of an inspection. It provides for the taking of photographs (including video recordings) of the premises and things at the premises, the temporary vacation of the premises by the national inspector and person assisting during the execution of a warrant, and the completion of the execution of a warrant if a warrant were stopped by a court order and that order were reversed on appeal.

Clause 61 Use of equipment to examine or process things

80. This clause authorises a national inspector or a person assisting to bring equipment to a warrant premises if reasonably necessary for the examination or processing of things found at the premises to determine whether they are things that may be seized. If it is not practicable to process something at the premises or the occupier consents in writing, the thing may be moved to another place for processing. If things containing electronically stored information are moved, the national inspector must, if practicable to do so, notify the occupier of the address of the place and the time of processing and to allow the occupier or representative to be present during the examination or processing.

81. The clause also provides for the operation of equipment at the premises for the purpose of examining or processing a thing to determine whether the thing may be seized. The equipment may only be operated by the national inspector or person assisting if the national inspector believes on reasonable grounds that it is suitable for the purpose and that the equipment can be operated without damage to it.

Clause 62 Use of electronic equipment at premises

82. This clause authorises a national inspector to operate electronic equipment located at the premises, if it can be operated without damage to the equipment, to see whether evidential material is accessible. If evidential material is found, the material should be transferred to a documentary form or to a disc, tape or other storage device or, if that is not practicable, to seize the equipment, disc, tape or other associated device.

83. The clause also provides for the securing for up to 24 hours of equipment, which requires expert assistance to operate, if the national inspector or person assisting believes on reasonable grounds that evidential material may be accessible by operating the equipment and that, if it is not secured, the material may be destroyed, altered or otherwise interfered with. The national inspector must notify the occupier of his or her intention to secure particular equipment. If an extension of the 24 hour period is required, the national inspector may apply for an extension from the magistrate who issued the warrant and must notify the occupier of the application to enable the occupier to be heard in relation to the application.

Clause 63 Warrants by telephone or other electronic means

84. In an urgent case a national inspector may obtain a warrant from a magistrate by telephone, telex, facsimile or other electronic means. The procedure is that an application must contain all the information provided in an ordinary application for a warrant but the application may be made before the information is sworn. The magistrate may seek additional information or communicate with the national inspector by voice if practicable.

85. The magistrate completes and signs a warrant if he or she is satisfied there are reasonable grounds for it. The terms of the warrant are then communicated by electronic means to the national inspector who completes a form of warrant accordingly.

86. The form of warrant and the information on which the warrant was based must be forwarded to the magistrate no later than the day following the expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier. The magistrate must attach these documents to the warrant which he or she signed earlier.

87. The warrant signed by the magistrate must be produced in court to prove that any entry, search or seizure was done in accordance with the warrant.

Clause 64 Retention of things which are seized

88. An article which is seized under clauses 58 or 63 may be retained for 60 days and then should be returned to the person from which it was seized or to the owner, unless court proceedings were begun within that time and have not been completed or the national inspector is authorised by a court or a law to retain, destroy or dispose of it.

Clause 65 Court of summary jurisdiction may permit a thing to be retained

89. This clause provides that a national inspector may seek an extension of the period of retention of an article by applying to a court of summary jurisdiction before the end of the period. The court may order the retention of the thing for a period specified in the order if it is satisfied that a further period of retention is justified for the purposes of an investigation as to whether an offence has been committed or to enable evidence of an offence to be secured for the purposes of a prosecution.

Division 6 - Miscellaneous provisions relating to warrants**Clause 66 Announcement before entry**

90. The national inspector or a person assisting, before entering a facility, site or premises, must announce to any person there that he or she is authorised to enter and to give that person the opportunity to allow them in, unless the national inspector or person assisting has reasonable grounds for believing that the effective execution of the warrant would be frustrated by such a procedure.

Clause 67 Availability of assistance and use of force in executing warrant

91. This clause allows the national inspector executing a warrant to obtain assistance and with that assistance use such force against persons and things as is necessary and reasonable in the circumstances.

Clause 68 Details of warrant to be given to occupier etc.

92. This clause provides that a national inspector executing a warrant must make available a copy of the warrant to the occupier or his or her representative.

Clause 69 Copies of seized things to be provided

93. This clause provides that a national inspector or person assisting must provide the permit holder or occupier, on request, with a copy of information seized under warrant, provided that the information can be readily copied.

Clause 70 Compensation for damage to electronic equipment

94. This clause provides for compensation to be paid to the owner of equipment damaged during an inspection caused by insufficient care being exercised in selecting the operator or by the operator in operating the equipment. In determining the amount of compensation, account is to be taken of any warning or advice given by the occupier or his or her staff or agents present at the time. Compensation would be payable out of money appropriated by the Parliament for the purpose.

Clause 71 Offence for making false statements in applications for warrant

95. It is an offence for a national inspector to give a false or misleading statement in an application for a warrant. Penalty: imprisonment for two years.

Clause 72 Offences relating to telephone warrants

96. It is an offence for a national inspector to state in a warrant the name of the magistrate issuing the warrant who did not do so; to state in a form of warrant a matter which is materially different to that in a warrant issued by a magistrate; to purport to present a warrant that had not been approved by a magistrate; or to give a magistrate a form of warrant that was not the one that the inspector purported to execute. Penalty: imprisonment for two years.

Division 7 - Manner of conducting international compliance and challenge inspections - facility agreements and managed access**Clause 73 Initial inspection plan**

97. This clause provides that international or challenge inspections must be conducted in a manner that is the least intrusive consistent with achieving the purposes of the inspection. The clause also requires the inspection team to give the Director an initial inspection plan after the initial briefing and any preliminary inspection.

Clause 74 Initial inspection plan and conduct of inspection to be consistent with facility agreements

98. This clause provides that an initial inspection plan must be consistent with any facility plan in force at the facility.

Clause 75 Managed access

99. This clause provides that where the inspection is of a declared facility without a facility agreement or of a place that is not a declared facility, the inspection team must, in consultation with the Director, modify its initial inspection plan, if necessary, in accordance with the provisions relating to managed access in Annex 2 to the Convention, so as to ensure the protection of sensitive equipment, information and places that are not related to chemical weapons.

Division 8 - Facility agreements

Clause 76 Facility agreements

100. In the circumstances outlined in the Convention, the Minister and the Organization must enter into a facility agreement in relation to a Schedule 1 facility and may enter into a facility agreement in relation to a Schedule 2 or 3 facility or an OCP facility. An agreement may cover such things as the Minister thinks necessary to give effect to the Convention.

PART 6 - OFFENCES

Clause 77 Production etc. of Schedule 1 chemicals otherwise than in accordance with permit

101. It is an offence for a person to operate a Schedule 1 facility without a permit or otherwise than in accordance with a permit required under Part 3. Penalty: imprisonment for 5 years or 500 penalty units, or both.

102. It is an offence for a person to operate a Schedule 2 facility without a permit or otherwise than in accordance with a permit required under Part 3. Penalty: imprisonment for 2 years or 250 penalty units, or both.

103. It is an offence for a person to operate a Schedule 3 facility without a permit or otherwise than in accordance with a permit required under Part 3. Penalty: 250 penalty units.

Clause 78 Breach of condition of permit

104. It is an offence for a permit holder, without reasonable excuse, to contravene a condition of the permit. Penalty: 100 penalty units.

Clause 79 Interference with monitoring equipment

105. It is an offence to interfere with monitoring equipment with the intention of adversely affecting the operation of the equipment installed at a declared facility. Penalty: imprisonment for two years.

Clause 80 False or misleading statements and documents

106. It is an offence for a person intentionally or recklessly to provide false or misleading information or document to a person who is exercising a power or performing a function under the Act. Penalty: imprisonment for two years.

Clause 81 Forfeiture

107. A court may order the forfeiture of any substance or article used in the commission of an offence under the Act. The Minister may order the disposal of a forfeited article.

Clause 82 Hearing to be in private in certain circumstances

108. A court may order that, in order to prevent the disclosure of confidential business information or chemical technology, proceedings for an offence under this Bill should not be open to the public, a record of proceedings should not be published or documents should not be open to general access. Failure to comply with such an order is an offence. Penalty: imprisonment for two years.

109. Any documents containing such information that would otherwise form a record of court proceedings shall be delivered to the Director after the termination of the proceedings.

Clause 83 Register of Permits and Notifications

110. The Register of Permit Holders or a certified copy of the Register is prima facie evidence that a person is or is not a permit holder where it appears from the Register that such person holds or does not hold a permit. A document certified by the Director to be a true copy of the Register is prima facie evidence that it is such a copy.

Clause 84 Evidence of analyst

111. The Minister may appoint a person to be an analyst for the purposes of the Bill. A certificate signed by the analyst setting out one or more certain specified particulars relating to a substance or article is prima facie evidence of the matters in the certificate. A certificate cannot be received in evidence unless a copy has been given to the person charged with the offence. A person charged with the offence may require the analyst to be called as a prosecution witness, provided that the prosecutor is given five days notice or the court, by order, allows the person to require the analyst to be called. If called, the analyst may be cross-examined as if he or she had given evidence.

Clause 85 Equipment or material approved by Organization

112. The Director may certify that equipment or material is equipment or material approved by the Organization for use in international compliance or challenge inspections. In any proceedings, such certificate is *prima facie* evidence of the matters in the certificate.

PART 7 - ADMINISTRATION

Division 1 - Director of the Chemical Weapons Convention Office

Clause 86 Director of Chemical Weapons Convention Office

113. The Minister may designate an office within the Department, or within an agency or an office for which he or she is responsible, as the office whose occupant is the Director of the Chemical Weapons Convention Office.

Clause 87 Functions of Director

114. The functions of the Director are to carry out, on behalf of Australia, Australia's obligations under the Convention; to facilitate inspections of premises in Australia if Australia's compliance with the Convention is challenged; carry out duties and exercise powers conferred on the Director under the Bill and regulations; and administer the legislation.

Clause 88 The Chemical Weapons Convention Office

115. The Director and such staff of the Department, agency or office as the Minister determines constitutes the Chemical Weapons Convention Office.

Clause 89 Delegation by Director

116. The Director may delegate any or all of his or her powers to a member of the staff of the CWC Office.

Division 2 - Controller of Permits and Notifications

Clause 90 Controller of Permits and Notifications

117. The Director must nominate an office within the CWC Office as the Controller of Permits and Notifications.

Clause 91 Function of the Controller

118. The function of the Controller of Permits and Notifications is to process applications for permits and renewals of permits and for notifications.

Division 3 - National inspectors and consultants

Clause 92 National inspectors

119. This clause provides that the Director is a national inspector and that the Director may appoint other national inspectors who may be, but are not required to be, officers of the CWC Office.

Clause 93 Identity card

120. The Director must have, and must issue to every other national inspector a photographic identity card which must be surrendered when the person ceases to be a national inspector. Penalty for non-compliance: one penalty unit.

Clause 94 Engagement of consultants etc.

121. The Director may engage consultants with the approval of the Minister. Terms and conditions of an engagement are to be determined by the Director.

PART 8 - MISCELLANEOUS**Clause 95 Powers to be exercised in accordance with Convention**

122. The exercise of a power or discretion or the performance of a duty or function under the legislation must not be inconsistent with the Convention. In exercising a power or discretion, a person must have regard to Australia's obligations under the Convention.

Clause 96 Annual report by Director

123. The Director is required to furnish an annual report to the Minister to be laid before each House of the Parliament.

Clause 97 Additional reports

124. The Minister may require additional reports from the Director. The Director may give the Minister such other reports as the Director thinks appropriate.

Clause 98 Register of Permits and Notifications

125. This clause provides that the Director must keep in an approved form a Register of Permits and Notifications and enter in the Register particulars of all permits and renewals, transfers and revocations of permits.

Clause 99 Delegation by Minister

126. The Minister may delegate all or any of his or her powers to the Secretary to the Department, the Director or an SES office within the Department.

Clause 100 Organization inspectors

127. The Minister must declare a person to be an Organization inspector if the Minister is satisfied that a person has been designated as an Organization inspector or inspection assistant to Australia. Under the Convention, a State Party may inform the Organization, before an inspection is announced, that it would not accept a particular Organization inspector or inspection assistant as a member of an inspection team to conduct an inspection on its territory.

Clause 101 Privileges and immunities of Organization inspectors and foreign country inspectors

128. This clause provides that an Organization inspector or a foreign country inspector is to have privileges and immunities as are prescribed for the purposes of this clause.

Clause 102 Secrecy

129. This clause provides for the confidentiality of information or documents concerning the affairs of another person acquired by or given to specified offices or staff in performance of their duties under the legislation. A record must not be made of the information (including that contained in the Register of Permits and Notifications) or documents, and the information (including that contained in the Register of Permits and Notifications) or documents must not be divulged or communicated to any other person except in accordance with the legislation.

130. The clause also prohibits the divulging or communication of information or production of documents referred to in sub-clause (2) in a court proceeding except when it is necessary to do so in a proceeding relating to the Bill.

Clause 103 Australia not liable for acts or omissions of Organization etc.

131. Nothing in the Bill makes Australia liable for any act or omission by the Organisation or an Organization inspector in the implementation of the Convention.

Clause 104 Regulations

132. Regulations may be made by the Governor-General generally for the administration of the Act and more specifically with respect to notifications under the Act and regulations by the Director to a declared facility; the imposition of penalties for offences against the regulations not to exceed 10 penalty units; and the making of reports to the Organization in compliance with Australia's obligations under the Convention.



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