



Chemical Weapons (Prohibition) Amendment Act 1998

No. 9, 1998



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**An Act to amend the *Chemical Weapons
(Prohibition) Act 1994*, and for other purposes**

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An Act to amend the *Chemical Weapons (Prohibition) Act 1994*, and for other purposes

[Assented to 6 April 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Chemical Weapons (Prohibition)
Amendment Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsection (3), the following items of Schedule 1 commence on a day to be fixed by Proclamation:
- (a) item 3;
 - (b) items 5 to 15 (inclusive);
 - (c) items 17 to 22 (inclusive);
 - (d) items 24 to 29 (inclusive);
 - (e) item 45;
 - (f) items 48, 49 and 50;
 - (g) items 55 to 59 (inclusive);
 - (h) items 72, 73 and 74.
- (3) If the items referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those items commence on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Chemical Weapons (Prohibition) Act 1994

1 Subsection 7(1)

Insert:

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device.

2 Subsection 7(1) (definition of *facility agreement*)

After “an agreement”, insert “or arrangement”.

3 Subsection 7(1) (definition of *permit*)

Omit “section 20”, substitute “section 19A or 20”.

4 After section 8

Insert:

8A Electronic lodgment

The Director may require or permit an application, notice or report that is to be given to the Controller or Director for the purposes of this Act to be given, in accordance with specified software requirements and specified authentication requirements:

- (a) on a specified kind of data storage device; or
- (b) by way of a specified kind of electronic transmission.

5 Before section 9

Insert:

8B Regulations may define *consumption, processing and production of chemicals*

- (1) For the purposes of this Act, the regulations may provide that *consumption*, in relation to a specified chemical, has the meaning prescribed by the regulations.

(2) For the purposes of this Act, the regulations may provide that ***processing***, in relation to a specified chemical, has the meaning prescribed by the regulations.

(3) For the purposes of this Act, the regulations may provide that ***production***, in relation to a specified chemical, has the meaning prescribed by the regulations.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

6 At the end of section 10

Add:

(3) For the purposes of this Act, the regulations may prescribe the method for working out the total amount of a specified Schedule 1 chemical that is produced, acquired, retained or used at, or transferred from, a facility during a year.

(4) For the purposes of this Act, the regulations may prescribe the method for working out the total amount of a specified Schedule 2 chemical that is produced, processed or consumed at a plant comprising, or comprising part of, a facility during a year.

(5) For the purposes of this Act, the regulations may prescribe the method for working out the total amount of a specified Schedule 3 chemical that is produced at a plant comprising, or comprising part of, a facility during a year.

(6) For the purposes of paragraph 28(6)(a), the regulations may prescribe the method for working out the total amount of unscheduled discrete organic chemicals produced at a facility during a year.

(7) For the purposes of paragraph 28(6)(b), the regulations may prescribe the method for working out the total amount of a specified unscheduled discrete organic chemical that is produced at a plant comprising, or comprising part of, a facility during a year.

(8) A method prescribed under this section may involve disregarding a chemical when produced at or below a specified concentration.

(9) Subsection (8) does not limit subsection (3), (4), (5), (6) or (7).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

7 Subsection 15(2)

Omit “sets up a yearly permit system for persons who anticipate, in the forthcoming year,”, substitute “deals with the grant, and renewal, of permits for persons who anticipate”.

8 Subsection 15(3)

Omit all the words from and including “of circumstances” to and including “Division 1”, substitute “in circumstances where a permit under Division 1 was in force in respect of a particular year, but the permit will not be in force in respect of the next year”.

9 Subsection 17(1)

After “Controller”, insert “, by such day as is prescribed,”.

10 Subsection 17(1)

After “the form.”, insert “A failure to apply by that day does not affect the validity of the application.”.

11 At the end of subsection 17(1)

Add:

Note: However, if a person fails to apply by that day, the Director may name the person in the annual report: see section 96.

12 Subsections 18(2), (3) and (4)

Repeal the subsections, substitute:

- (2) A permit is to be granted in respect of one year only, but may be automatically renewed under section 19A.
- (3) A permit comes into force:
 - (a) on the day it is granted; or
 - (b) on such earlier day as the Minister specifies in the permit; or
 - (c) on such later day as the Minister specifies in the permit;

and remains in force until the end of the year in respect of which it is granted.

- (4) A permit must set out the effect of section 19A.

13 After section 19

Insert:

19A Automatic renewal of permits

- (1) If a permit is in force immediately before the end of a particular year because:
- (a) the permit was granted under section 18 in respect of that year; or
 - (b) the permit was renewed under section 20 in respect of that year;
- the permit is taken to be renewed in respect of each of the next 4 years.
- (2) The permit is renewed subject to the conditions attaching to the permit before renewal.

14 Subsection 20(1)

Repeal the subsection, substitute:

- (1) A holder of a permit that was renewed for 4 years under section 19A may, by such day as is prescribed, apply to the Minister for the renewal of the permit in respect of the year (the *eligible year*) following the last of those 4 years.
- (1A) An application under subsection (1) is to be made by giving the Controller a renewal application, in the approved form, containing such information as is required by the form.
- (1B) A failure to apply by the day prescribed for the purposes of subsection (1) does not affect the validity of the application.

Note: However, if a person fails to apply by that day, the Director may name the person in the annual report: see section 96.

Note: The heading to section 20 is altered by omitting “**Renewal**” and substituting “**Non-automatic renewal**”.

15 Subsection 20(5)

Omit “a year”, substitute “the eligible year”.

16 After section 24

Insert:

24A Transfer of permits—notification by previous permit holder

(1) If:

- (a) because the ownership of a facility is to be transferred; or
- (b) for any other reason;

the permit holder in relation to a facility will no longer be the operator of that facility, the permit holder must notify the Minister of that fact by giving the Controller notice in the approved form containing such information as is required by the form.

(2) The obligation imposed on the permit holder by subsection (1) is taken to be a condition of the permit.

17 After paragraph 26(1)(a)

Insert:

- (aa) a decision under subsection 18(3) to specify, or not to specify, the day a permit comes into force; or

18 Subsection 28(1)

Omit “there is no requirement for such a permit under that subsection”, substitute “no such permit will be in force”.

19 Paragraph 28(2)(a)

Omit “there is no requirement for such a permit”, substitute “no such permit will be in force”.

20 Paragraph 28(4)(a)

Omit “there is no requirement for such a permit under that subsection”, substitute “no such permit will be in force”.

21 Subsection 28(7)

Omit “only producing hydrocarbons or explosives”, substitute “producing hydrocarbons or explosives in a manner specified in the regulations”.

22 At the end of section 28

Add:

(8) In this section:

explosive has the meaning prescribed by the regulations.

hydrocarbon has the meaning prescribed by the regulations.

23 Subsection 29(1)

Omit “written”.

24 Subsection 29(2)

Omit “at such time”, substitute “by such day”.

25 Subsection 29(4)

Repeal the subsection.

26 Subsection 30(1)

Repeal the subsection, substitute:

(1) This section applies to a facility if there is or was a permit to operate the facility during a particular year.

27 Paragraph 30(2)(a)

Omit “to the Director, in such form and at such intervals as are prescribed such written particulars as are prescribed,”, substitute “the Director, by such day as is prescribed, a report in the approved form containing such information as is required by the form”.

28 Paragraph 30(2)(c)

Repeal the paragraph, substitute:

(c) prepare and give to the Director from those records, in such circumstances, and by such day, as is prescribed, a periodic

report in the approved form containing such information as is required by the form; and

- (d) prepare and give to the Director from those records, in such circumstances, and by such day, as is prescribed, a special report in the approved form containing such information as is required by the form.

29 Subsection 30(5)

Repeal the subsection.

30 Subsections 39(2) and (3)

Omit “accompanying”.

31 At the end of section 39

Add:

Note: For the obligations of a national inspector in relation to not delaying or otherwise hindering the carrying out of an international compliance inspection, see section 95 of this Act and paragraph 41 of Part II of the Verification Annex to the Convention.

32 Paragraph 40(1)(a)

After “year”, insert “or the next year”.

33 Subsections 40(2) and (3)

Omit “accompanying”.

34 At the end of section 40

Add:

Note: For the obligations of a national inspector in relation to not delaying or otherwise hindering the carrying out of an international compliance inspection, see section 95 of this Act and paragraph 41 of Part II of the Verification Annex to the Convention.

35 Paragraph 41(1)(a)

Omit “permit year”, substitute “year or the next year”.

36 Subsection 41(2)

Omit “accompanying”.

37 At the end of section 41

Add:

Note: For the obligations of a national inspector in relation to not delaying or otherwise hindering the carrying out of an international compliance inspection, see section 95 of this Act and paragraph 41 of Part II of the Verification Annex to the Convention.

38 Subsection 42(1)

Repeal the subsection, substitute:

- (1) Subject to subsection (2), an international compliance inspection of an OCP facility may be carried out at any time during the period:
 - (a) beginning on the day of notification of the facility under section 28; and
 - (b) ending 90 days after the start of the year following the year in which that notification occurred.

39 Subsection 42(2)

Omit “accompanying”.

40 At the end of section 42

Note: For the obligations of a national inspector in relation to not delaying or otherwise hindering the carrying out of an international compliance inspection, see section 95 of this Act and paragraph 41 of Part II of the Verification Annex to the Convention.

41 Section 43

Omit “accompanying”.

42 Subsection 47(3)

Omit “accompanying”.

43 At the end of section 47

Add:

Note: For the obligations of a national inspector in relation to not delaying or otherwise hindering the carrying out of a challenge inspection, see section 95 of this Act and paragraph 41 of Part II of the Verification Annex to the Convention.

44 Subsections 48(4) and (6)

Omit “accompanying”.

45 Subsection 49(4)

Repeal the subsection, substitute:

- (4) For the purposes of a particular inspection, the challenge inspection procedures applicable to an inspection by consent apply subject to such of the prescribed modifications as the Director determines in writing are to apply.

46 Subsection 49(8)

Omit “foreign country” (first occurring), substitute “State Party”.

47 Subsection 49(8)

Omit “another State Party”, substitute “a foreign country”.

48 Subsection 49(10)

Omit “modifications as are prescribed”, substitute “of the prescribed modifications as the Director determines in writing are to apply”.

49 At the end of section 49

Add:

- (12) The Director must not specify, in a determination under subsection (4) or (10), a particular modification that relates to a particular inspection unless, having regard to the circumstances of that inspection, the Director is satisfied that it is appropriate to specify that modification.

50 Subsection 53(3)

Repeal the subsection, substitute:

- (3) For the purposes of this section, the regulations may specify when an international compliance inspection starts and ends.
- (4) For the purposes of this section, the regulations may specify when a challenge inspection starts and ends.

51 Section 55

Omit “accompanying”.

52 Subsections 76(1) and (2)

After “agreement”, insert “or arrangement”.

53 Subsection 76(3)

Omit “A facility agreement”, substitute “An agreement or arrangement”.

54 At the end of section 80

Add:

- (4) For the purposes of subsection (1), a statement made on a data storage device, or by way of electronic transmission, is taken to be a statement made in writing.

55 After subsection 96(1)

Insert:

(1A) If:

- (a) a person applied for a permit after the day prescribed for the purposes of subsection 17(1); or
- (b) a person applied for a renewal of a permit after the day prescribed for the purposes of subsection 20(1);

the Director may name the person in a report under subsection (1) of this section as a person who made a late application for a permit, or for a renewal of a permit, as the case may be.

56 Subsection 98(2)

Omit “section 20”, substitute “section 19A or 20”.

57 Subsection 98(5)

Omit “permit holder renews a permit under section 20,”, substitute “permit is renewed under section 19A or 20,”.

58 Subsection 98(7)

Omit “section 20”, substitute “section 19A or 20”.

59 After section 101A

Insert:

101B Privileges and immunities of other persons

- (1) The regulations may provide that any or all of the persons referred to in an agreement:
 - (a) between Australia and the Organization; and
 - (b) made under paragraph 50 of Article VIII of the Convention;are to have such of the privileges and immunities referred to in the agreement as are specified in the regulations.
- (2) This section does not limit the *International Organisations (Privileges and Immunities) Act 1963*.

60 Subsection 102(1)

Omit “This section applies to a person”, substitute “For the purposes of this section, an *eligible person* is a person”.

61 At the end of subsection 102(1)

Add:

; or (f) any other Commonwealth officer.

62 Subsection 102(2)

Omit “a person to whom this section applies”, substitute “an eligible person”.

63 Paragraph 102(2)(a)

After “any” (second occurring), insert “confidential”.

64 Paragraph 102(2)(a)

Omit “first-mentioned person in the performance of duties for the purpose of”, substitute “eligible person in the performance of duties in relation to”.

65 Paragraph 102(2)(b)

After “person a”, insert “confidential”.

66 Paragraph 102(2)(c)

After “any” (second occurring), insert “confidential”.

67 Subsection 102(2) (penalty)

Repeal the penalty.

68 Subsection 102(3)

Omit “A person to whom this section applies”, substitute “An eligible person”.

69 After subsection 102(3)

Insert:

(3A) If:

- (a) information is divulged or communicated to a person (the *recipient*) by an eligible person for the purposes of this Act or for the purpose of complying with Australia’s obligations under the Convention; and
- (b) at the time the information was divulged or communicated, the eligible person specified that the information was confidential information to which this subsection applies;

the recipient must not, either directly or indirectly:

- (c) make a record of the information; or
- (d) divulge or communicate the information to another person.

(3B) If:

- (a) information is divulged or communicated to a person (the *recipient*) by an eligible person for the purposes of this Act or for the purpose of complying with Australia’s obligations under the Convention; and
- (b) at the time the information was divulged or communicated, the eligible person specified that the information was confidential information to which subsection (3A) applies;

the recipient must not be required to divulge or communicate the information to a court, unless it is necessary to do so:

- (c) for the purposes of this Act; or
 - (d) for the purposes of a prosecution for an offence against this Act.
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(3C) If:

- (a) a document is produced to a person (the *recipient*) by an eligible person for the purposes of this Act or for the purpose of complying with Australia's obligations under the Convention; and
- (b) at the time the document was produced, the eligible person specified that the document was a confidential document to which this subsection applies;

the recipient must not, either directly or indirectly:

- (c) make a copy of the document; or
- (d) produce the document to another person.

(3D) If:

- (a) a document is produced to a person (the *recipient*) by an eligible person for the purposes of this Act or for the purpose of complying with Australia's obligations under the Convention; and
- (b) at the time the document was produced, the eligible person specified that the document was a confidential document to which subsection (3C) applies;

the recipient must not be required to produce the document to a court, unless it is necessary to do so:

- (c) for the purposes of this Act; or
- (d) for the purposes of a prosecution for an offence against this Act.

(3E) A person who intentionally or recklessly contravenes subsection (2), (3A) or (3C) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

70 After subsection 102(4)

Insert:

(4A) For the purposes of this section, if in the course of an inspection under Part 5 an eligible person acquires information concerning the affairs of another person, the information is taken to be ***confidential information*** unless, at the time the information was acquired:

- (a) the information was already available to the public; or

- (b) the other person specified that the other person would have no objection if the information were to become available to the public.

However, if an objection is made, but is later withdrawn, the information is taken not to be *confidential information* at any time after the withdrawal.

- (4B) For the purposes of this section, if in the course of an inspection under Part 5 an eligible person acquires a document relating to the affairs of another person, the document is taken to be a *confidential document* unless, at the time the document was acquired:

- (a) the document was already available to the public; or
- (b) the other person specified that the other person would have no objection if the document were to become available to the public.

However, if an objection is made, but is later withdrawn, the document is taken not to be a *confidential document* at any time after the withdrawal.

71 Subsection 102(5)

Insert:

Commonwealth officer has the same meaning as in section 70 of the *Crimes Act 1914*.

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

The amendments of sections 17 and 96 of the *Chemical Weapons (Prohibition) Act 1994* made by this Schedule apply to applications made after the commencement of this item.

73 Application of amendments—section 18 of the *Chemical Weapons (Prohibition) Act 1994*

The amendment of section 18 of the *Chemical Weapons (Prohibition) Act 1994* made by this Schedule applies to permits granted after the commencement of this item.

74 Transitional—amendments of section 53 of the *Chemical Weapons (Prohibition) Act 1994*

Despite the repeal of subsection 53(3) of the *Chemical Weapons (Prohibition) Act 1994* made by this Schedule, that subsection continues to apply, in relation to an inspection that began before the commencement of this item, as if the repeal had not happened.

75 Application of amendments—section 102 of the *Chemical Weapons (Prohibition) Act 1994*

The amendments of subsections 102(2) and (3) of the *Chemical Weapons (Prohibition) Act 1994* made by this Schedule, to the extent that they relate to an eligible person covered by paragraph 102(1)(f) of that Act, apply to information acquired, and documents given, after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 26 October 1997
Senate on 24 March 1998]*

(214/97)