

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 313

Issued by the Authority of the Minister for Foreign Affairs

Chemical Weapons (Prohibition) Act 1994

Chemical Weapons (Prohibition) Amendment Regulations 2006 (No. 1)

Australia is a party to the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Convention) which entered into force generally, and for Australia, on 29 April 1997. 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 Convention also provides for the production and use of toxic chemicals and precursors for activities not prohibited under the Convention. Such chemicals may be produced or used for industrial, research, medical, pharmaceutical or protective purposes (for example, testing chemical detectors, respirator systems and protective clothing). Australia's obligations under the Convention, including controlling the production and use of certain chemicals, are implemented by the Act and the *Chemical Weapons (Prohibition) Regulations 1997* (the Principal Regulations).

The Organization for the Prohibition of Chemical Weapons (OPCW), based in The Hague, is responsible for implementing the Convention, including compliance. The OPCW monitors with the Convention's verification regime through annual declarations provided by each State Party and periodic on-site inspections conducted by OPCW inspectors.

The amendment Regulations:

- provide a mechanism by which amendments to the Convention can be set out in the Principal Regulations (for the purposes of the definition of *Convention* in subsection 7 (1) of the Act);
- give effect to a change in Australian policy regarding the threshold amount at which chemicals listed in Part A of Schedule 2 to the Convention are required to be declared; and
- set out in the Principal Regulations two technical amendments made to the Verification Annex of the Convention on 15 January 1999 and 14 October 2004.

Details of the amendment Regulations are set out in the Attachment.

The Office of Regulation Review has advised that a Regulation Impact Statement is not required as "the proposed amendments do not have a direct or significant indirect impact on business and do not restrict competition". It was decided, as a result of this assessment, that further consultation with other agencies and/or industry was not required.

Details of the *Chemical Weapons (Prohibition) Amendment Regulations 2006 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Chemical Weapons (Prohibition) Amendment Regulations 2006 (No. 1)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of *Chemical Weapons (Prohibition) Regulations 1997*

This regulation provides that the *Chemical Weapons (Prohibition) Regulations 1997* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – After regulation 3, insert regulation 3AA.

Subsection 7 (1) of the Act provides that the term *Convention* means “the Convention (including the annexes to the Convention) a copy of the English text of which is set out in the Schedule, as amended by any amendment to the Convention that is accepted by Australia and a copy of the English text of which is set out in the regulations”. This item, inserts after regulation 3, regulation 3AA which refers to the means by which such amendments are to be set out, that is by including the text of the amendments in a new Schedule, Schedule 1, to the Principal Regulations.

Item [2] – Regulation 3F, table, item 5

There are three Schedules of chemicals listed under the Convention. The chemicals listed in Schedule 2 are considered to have both chemical warfare and industrial applications.

Regulation 3F of the Principal Regulations sets out in a table format the method for working out the total amount of a Schedule 2 chemical produced, processed or consumed at a plant for which a permit is required under subsection 16(2) of the Act. Item 5 of regulation 3F currently provides that any mixture containing 30 percent or less by weight of any Schedule 2 chemical is to be regarded as containing zero amount of that Schedule 2 chemical. The effect of existing item 5 is that a permit to produce, process or consume a Schedule 2 chemical is required where a mixture contains more than 30 percent by weight of that chemical.

This item replaces the current method for working out the total amount of a Schedule 2 chemical in item 5 with two different methods to be applied to Schedule 2 chemical mixtures depending on whether they are toxic (Part A of Schedule 2) or lower risk precursor chemicals (Part B of Schedule 2).

Specifically:

- a mixture containing 0.5 percent or less by weight of a Part A of Schedule 2 chemical will be regarded as containing zero amount of that chemical; and
- a mixture containing 30 percent or less by weight of a Part B of Schedule 2 chemical will be regarded as containing zero amount of that chemical.

In effect, a permit to produce, process or consume a Schedule 2 chemical will be required for any mixture containing more than 0.5 percent of a Part A of Schedule 2 chemical and for any mixture containing more than 30 percent of a Part B of Schedule 2 chemical.

This amendment is considered necessary because Part A chemicals are highly toxic and are more readily able to be used in a manner which is prohibited under the Convention. On the other hand, Part B chemicals are precursor chemicals for chemical warfare agents and are less toxic than the chemicals listed in Part A. Australia has been involved in negotiations over the past 7 years with other parties to the Convention on a draft decision regarding threshold limits for these groups of chemicals. International consensus on this issue has not yet been reached. The amendment would enable Australia to demonstrate in a practical way its commitment to controlling the production and use of highly toxic chemicals were such chemicals to be produced or used in the future.

Item [3] – After regulation 17 insert Schedule 1

This item inserts after regulation 17 of the Principal Regulations a new Schedule, Schedule 1, as referred to in regulation 3AA of the Regulations (Item [1] above).

Schedule 1 – Amendments to the Convention accepted by Australia

Item [1] - Amendment to the Verification Annex – 15 January 1999

This item inserts in new Schedule 1, an amendment to the Convention accepted by Australia on 15 January 1999. This amendment, adds a new paragraph 5bis to Section B of Part VI of the Verification Annex to the Convention. Paragraph 5bis provides that transfers for medical or diagnostic purposes of quantities of 5 milligrams or less of the Schedule 1 chemical saxitoxin may be notified to the OPCW at the time of transfer rather than 30 days prior to transfer as required for all other transfers of saxitoxin.

Item [2] - Amendment to the Verification Annex – 14 October 2004

This item inserts in new Schedule 1 an amendment to the Convention accepted by Australia on 14 October 2004. This amendment adds a new paragraph 72bis to Part V of the Verification Annex to the Convention. Paragraph 72bis provides that countries ratifying or acceding to the Convention later than six years after entry into force are able to request an additional period of time (but not more than six years after the Convention enters into force for that country) to convert a chemical weapons production facility for purposes not prohibited under the Convention.