



## **Weapons of Mass Destruction Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 13 December 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Christopher Pyne  
Minister for Defence

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## 1 Name

This instrument is the *Weapons of Mass Destruction Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	15 December 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms

## 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) authorised person;
- (b) goods;
- (c) supply;
- (d) Weapons of Mass Destruction program (or WMD program).

In this instrument:

*Act* means the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*.

*store securely*, in relation to goods, means store the goods in a manner that:

- (a) prevents unauthorised access to the goods; and
- (b) prevents injury to, or harm to the health of, a person, arising from the goods or a property of the goods.

## **6 Request to the Minister for information**

A request for information from the Minister under subsection 12(1) of the Act must set out the following particulars:

- (a) the name and address of the person making the request;
- (b) if the person has a postal address that is different from the address set out under paragraph (a)—that address;
- (c) a description of:
  - (i) the goods to be supplied; or
  - (ii) the non-regulated goods to be exported; or
  - (iii) the services to be provided;
- (d) the name and address of the intended recipient of the goods or services;
- (e) the reasons why the person believes or suspects that:
  - (i) the goods will or may be used in a WMD program; or
  - (ii) the services will or may assist a WMD program.

## **7 Permit to supply or export goods or provide services**

For the purposes of paragraph 13(1)(c) of the Act, an application for a permit to supply or export goods, or provide services, must be in writing, and must set out the following particulars:

- (a) the name and address (not being a post office address) of the person applying for the permit;
- (b) if the person has a postal address that is different from the address set out under paragraph (a)—that address;
- (c) a description of:
  - (i) the goods to be supplied; or
  - (ii) the non-regulated goods to be exported; or
  - (iii) the services to be provided;
- (d) the name and address of the intended recipient of the goods or services;
- (e) the reasons why the person believes that the supply or export of the goods, or provision of the services, would not be contrary to Australia's international or treaty obligations or the national interest.

## **8 Notice prohibiting supply or export of goods or provision of services**

- (1) For the purposes of subsection 14(1) of the Act, a notice by the Minister:
  - (a) must be in writing; and
  - (b) must set out the Minister's reasons for giving the notice, except to the extent that disclosure of those reasons would prejudice the security, defence or international relations of Australia.
- (2) If a notice does not set out the Minister's reasons, or some of the Minister's reasons, for giving the notice because disclosure of those reasons would prejudice the security, defence or international relations of Australia, that fact must be stated in the notice.

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## 9 Revocation of notice of prohibition

For the purposes of subsection 14(3) of the Act, the revocation of a notice given under subsection 14(1) of the Act must:

- (a) be in writing; and
- (b) be notified to the person affected by the notice without delay.

## 10 Storage of seized goods—prescribed procedures

- (1) For the purposes of subsection 17(6) of the Act, seized goods must be stored securely by an authorised person at a place approved by the Minister, in writing, as being a place suitable for the storage of goods of the kind seized.
- (2) In so approving a place, the Minister must consider:
  - (a) the nature of goods of that kind; and
  - (b) the suitability of the place for storing securely goods of that kind; and
  - (c) the need to preserve the condition and value of the goods as far as is practicable.

## 11 Destruction of condemned goods—prescribed procedures

- (1) For the purposes of subsection 17(7) of the Act, if particular condemned goods are goods that the Minister is satisfied can safely be destroyed, the goods must be destroyed at a place, and in a manner, that the Minister is satisfied are suitable for safely destroying goods of that kind.
- (2) However, subsection (1) does not apply if:
  - (a) the goods are goods to which an approval under section 12 of this instrument applies; and
  - (b) the goods are sold in accordance with the approval.
- (3) In determining a suitable place for safely destroying the goods, and the manner in which the goods may be destroyed, the Minister must consider:
  - (a) the nature of the goods; and
  - (b) the suitability of the place for safely destroying goods of that kind; and
  - (c) the availability of suitable methods with which to safely destroy goods of that kind.

## 12 Dealing with condemned goods—prescribed procedures

- (1) If the Minister is reasonably satisfied that particular condemned goods are of a kind to which subsection (2) applies, the Minister may give an authorised person written approval to sell the goods.
- (2) This subsection applies to goods that:
  - (a) are not, under another law of the Commonwealth, or a State or Territory:
    - (i) required to be destroyed; or
    - (ii) illegal to sell; and
  - (b) are of a kind that can be:
    - (i) given a use other than in a WMD program; or

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- (ii) readily, and safely, altered so that they are no longer of a kind that can be used in a WMD program.
- (3) On receiving the Minister's approval to sell the goods, the authorised person must:
  - (a) if the Minister so requires—alter the goods so that they are no longer of a kind that can be used in a WMD program; and
  - (b) offer the goods for sale at the best reasonably achievable price; and
  - (c) if the goods are sold—pay the proceeds to the Commonwealth.
- (4) The goods must not be transferred to a buyer until the buyer agrees, in writing:
  - (a) not to use the goods in a WMD program and not to cause or allow another person to use the goods in a WMD program; and
  - (b) to use the goods, or cause or allow the goods to be used, only for a lawful purpose.

### **13 Storage of condemned goods—prescribed procedures**

For the purposes of subsection 17(8) of the Act, until condemned goods are destroyed or otherwise dealt with, they must be stored securely as if they were goods to which section 10 of this instrument applied.

### **14 Notices**

- (1) This section sets out:
  - (a) methods for giving a notice required or permitted to be given to a person under the Act or this instrument; and
  - (b) the time at which the person is taken to have received the notice.

#### *Given personally*

- (2) The notice may be given to the person:
  - (a) at the last address notified to the Minister for the purpose of receiving notices, permits and approvals; and
  - (b) by a person authorised by the Minister for the purposes of this subsection; and
  - (c) either:
    - (i) by giving it to the person; or
    - (ii) by giving it to another person who appears to work at that address in a management or executive position.
- (3) If the notice is given under subsection (2), the person is taken to have received the notice at the time at which it is given.

#### *Sent by mail*

- (4) The notice may be posted to the person at the postal address last notified to the Minister for the purposes of receiving notices.
- (5) If the notice is given under subsection (4), the person is taken to have received the notice:



- (a) if the notice was posted from a place in Australia to an address in Australia—7 business days after the date of the notice in the place of the address to which it was sent; or
- (b) if paragraph (a) does not apply—21 days after the date of the notice in the place of the address to which it was sent.

*Faxed, emailed or sent by other electronic means*

- (6) If the person has notified to the Minister a fax number, email address or other electronic address for the purpose of receiving notices, the notice may be:
  - (a) faxed to the person at the fax number last notified to the Minister for that purpose; or
  - (b) sent to the person at the email address last notified to the Minister for that purpose; or
  - (c) sent to the person by any other electronic means to the electronic address last notified to the Minister for that purpose.
- (7) If the notice is given under subsection (6), the person is taken to have received the notice at the end of the day (in the person's location) on which it was sent or, if that day is not a business day, at the end of the next following business day.

## **15 Delegation by Minister**

- (1) The Minister may delegate any of the Minister's powers under this instrument to:
  - (a) an SES employee in the Department; or
  - (b) an APS employee in the Department with the classification of Executive Level 2, or an equivalent classification.
- (2) However, the Minister must not delegate such a power to a person unless the Minister is satisfied that the person has appropriate expertise.

*Delegations to continue in effect*

- (3) A delegation in force under regulation 12 of the *Weapons of Mass Destruction Regulations 1995* immediately before the commencement of this section has effect, immediately after that commencement, as if it had been made under subsection (1).

## **Schedule 1—Repeals**

### ***Weapons of Mass Destruction Regulations 1995***

#### **1 The whole of the instrument**

Repeal the instrument.