AUSTRALIA

Statutory Rules 1997 No. 84[1]

Chemical Weapons (Prohibition) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, make the following Regulations under the *Chemical Weapons (Prohibition) Act 1994*.

Dated 16 April 1997.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

ALEXANDER DOWNER
Minister for Foreign Affairs

PART 1—PRELIMINARY

Citation

1. These Regulations may be cited as the Chemical Weapons (Prohibition) Regulations.

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Commencement

2. (1) Regulation 4 commences on the day that section 20 of the Act commences.

(2) Regulation 5 commences on the day that section 29 of the Act commences.

(3) Regulations 6 and 7 commence on the day that section 30 of the Act commences.

(4) Part 3 commences on the day that section 49 of the Act commences.

(5) Part 4 commences on the day that section 101 of the Act commences.

(6) Regulation 15 commences on the day that section 98 of the Act commences.

[NOTE: The remainder of these Regulations commence on gazettal, see *Acts Interpretation Act 1901*, s. 48.]

Interpretation

3. In these Regulations:

"declarable Schedule 1 activity" means production of:

(a) more than 100 g each year of Schedule 1 chemicals for research, medical or pharmaceutical purposes; or

(b) a Schedule 1 chemical for protective purposes;

"excluded Schedule 1 chemical" has the same meaning as in section 16 of the Act;

"IUPAC chemical name" means a designation attributed to a chemical by the International Union of Pure and Applied Chemistry;

"PSF chemical" means an unscheduled discrete organic chemical containing 1 or more of the elements phosphorous, sulphur and fluorine;

"Schedule 1 activity" means production, acquisition, retention, use or transfer of a Schedule 1 chemical, other than an excluded Schedule 1 chemical;

"the Act" means the *Chemical Weapons (Prohibition) Act 1994*.

PART 2—PERMITS, NOTIFICATIONS AND RECORDS

Renewal of permits

4. **(1)** Subject to subregulation (2), the prescribed period for section 20 of the Act is:

(a) for a permit allowing declarable Schedule 1 activities—the period starting on 1 January in a year and ending on 14 September in that year; and

(b) in any other case—the period starting on 1 January in a year and ending on 14 October in that year.

(2) If a person applies for a permit under section 16 of the Act after the end of the period mentioned in subregulation (1), and wants to have the permit renewed, the prescribed period for the renewal of that permit ends on the day that the person applies for the permit.

Notifications

5. **(1)** Subject to subregulation (2), a notification under subsection 28 (1) or paragraph 28 (2) (a) or (4) (a) of the Act must be given before 15 October in the year for which the permit to operate the facility is held.

(2) A notification under subsection 28 (1) of the Act that relates to a facility for which a permit allowing declarable Schedule 1 activities is held must be given before 15 September in the year for which the permit to operate the facility is held.

(3) Subject to subregulation (4), a notification under subsection 28 (6) of the Act in respect of activities at a facility during a year must be given before 1 March in the following year.

(4) If a notification is required under paragraph 28 (2) (b) or (4) (b) or subsection 28 (6) of the Act in respect of activities that took place at a facility during a year that ended before the commencement of that subsection, the notification must be given within 7 days after the commencement of that subsection.

Reporting requirements

6. (1) For paragraph 30 (2) (a) of the Act, the operator of a Schedule 1 facility must give to the Director before 1 March in each year a written report that sets out the following information:

(a) for each Schedule 1 chemical produced, acquired, used or stored at, or transferred from, the facility during the previous year:

(i) the IUPAC chemical name; and

(ii) the common or trade name used by the facility; and

(iii) the structural formula; and

(iv) the Chemical Abstracts Service registry number, if assigned; and

(v) the quantities produced, acquired, used or transferred; and

(vi) the purpose or purposes of the production, acquisition or use;

(b) for each Schedule 1 chemical produced at the facility during the previous year—the name and quantity of any precursors used that are listed in Schedule 1, 2 or 3;

(c) for each Schedule 1 chemical stored at the facility during the previous year:

(i) the maximum quantity stored at any time during the year; and

(ii) the quantity stored at the end of the year;

(d) for a facility at which declarable Schedule 1 activities took place during the previous year—the information prescribed in subregulation (2).

Penalty: 10 penalty units.

(2) For paragraph (1) (d), the following information is prescribed:

(a) for each Schedule 1 chemical transferred to other facilities in Australia:

(i) the total quantity transferred; and

(ii) the quantity, recipient and purpose of each shipment;

(b) technical descriptions of any changes at the facility during the year including, for a single small-scale

facility, inventories of equipment and detailed diagrams of the facility;

(c) for a single small-scale facility and a protective facility—the production methods employed for each Schedule 1 chemical produced at the facility;

(d) for a single small-scale facility—in relation to each Schedule 1 chemical received from other facilities in Australia:

(i) the total quantity received; and

(ii) the quantity, origin and purpose of each shipment.

(3) For paragraph 30 (2) (a) of the Act, the operator of a Schedule 2 facility must give to the Director before 1 March in each year a written report that sets out the following information:

(a) for each plant located within the facility:

(i) the chemicals produced during the previous year; and

(ii) the processes involving each Schedule 2 chemical above the permit threshold that took place during the previous year; and

(iii) the processes involving other chemicals that took place during the previous year; and

(iv) any other main activities that took place during the previous year; and

(v) the production capacity of the plant for each Schedule 2 chemical above the permit threshold; and

(vi) whether the plant's function is dedicated or multi-purpose;

(b) for each Schedule 2 chemical above the permit threshold produced, processed or consumed at a plant within the facility during the previous year:

(i) the IUPAC chemical name; and

(ii) the common or trade name used by the facility; and

(iii) the structural formula; and

(iv) the Chemical Abstracts Service registry number, if assigned; and

(v) the total amount produced, processed, consumed, imported or exported;

(c) for each Schedule 2 chemical above the permit threshold produced, processed or consumed at a plant within the facility during the previous year—the purpose or purposes for which the chemical was produced, processed or consumed, including:

(i) if the chemical was processed or consumed at the facility—a general description of the final product; and

(ii) whether the chemical was produced for sale or transfer within Australia, direct export or other use; and

(iii) if the chemical was to be transferred within Australia:

(A) whether it was to be transferred to another industry, a trader or another destination; and

(B) if possible, a general description of the final product; and

(iv) if the chemical was to be exported directly—a specification of the destination; and

(v) if the chemical was produced or processed for another use—an identification of that use.

Penalty: 10 penalty units.

(4) For paragraph 30 (2) (a) of the Act, the operator of a Schedule 3 facility must give to the Director before 1 March in each year a written report that sets out the following information:

(a) for each plant located within the facility:

(i) the chemicals produced during the previous year; and

(ii) the processes involving chemicals that took place during the previous year; and

(iii) any other main activities that took place during the previous year;

(b) for each Schedule 3 chemical, more than 30 tonnes of which were produced at a plant within the facility during the previous year:

(i) the IUPAC chemical name; and

(ii) the common or trade name used by the facility; and

(iii) the structural formula; and

(iv) the Chemical Abstracts Service registry number, if assigned; and

(v) the total amount produced;

(c) the amount of each scheduled chemical imported or exported during the previous year, with:

(i) the names of the countries from which it was imported or to which it was exported; and

(ii) if it was imported from or exported to more than 1 country—the amount imported from or exported to each country.

Penalty: 10 penalty units.

Record keeping

7. (1) The operator of a Schedule 1 facility must keep a record of the information set out in subregulation 6 (1) for 2 years after the end of the year to which the information relates.

Penalty: 10 penalty units.

(2) The operator of a Schedule 2 facility must keep a record of the information set out in subregulation 6 (3) for 4 years after the end of the year to which the information relates.

Penalty: 10 penalty units.

(3) The operator of a Schedule 3 facility must keep a record of the information set out in subregulation 6 (4) for 2 years after the end of the year to which the information relates.

Penalty: 10 penalty units.

(4) The operator of an OCP facility must keep for 2 years after the end of the year to which the information relates a record of:

(a) the total annual production quantity of unscheduled discrete organic chemicals produced at the facility; and

(b) the total annual production quantity of PSF chemicals at each plant in the facility where more than 30 tonnes of any individual PSF chemical were produced during the year.

Penalty: 10 penalty units.

PART 3—VERIFICATION PROCEDURES

Clarification procedures—subsection 49 (3) inspections

8. The procedures set out in section 46 of the Act and in Article IX and Part X of the Verification Annex of the Convention for an inspection of a facility under subsection 49 (3) of the Act are modified, to the extent that the modifications do not reduce the rights of the operator of the facility, in the following manner:

(a) the time limits for the giving of access set out in paragraphs 14, 18, 19, 39 and 43 of Part X of the Verification Annex of the Convention are taken to be omitted;

(b) the exit monitoring provisions set out in paragraph 46 (1) (c) of the Act and in paragraphs 23 to 31 (inclusive) of Part X of the Verification Annex of the Convention are taken to be omitted;

(c) the provisions relating to access to declared facilities set out in paragraphs 15, 51 and 52 of Part X of the Verification Annex of the Convention are taken to be omitted;

(d) the provisions relating to the perimeter of the site in Part X of the Verification Annex of the Convention are taken to be omitted.

Clarification procedures—subsection 49 (10) inspections

9. The procedures set out in section 46 of the Act and in Article IX and Part X of the Verification Annex of the Convention for an inspection of a facility under subsection 49 (10) of the Act are modified, to the extent that the modifications do not reduce the rights of the operator of the facility, in the following manner:

(a) the time limits for the giving of access set out in paragraphs 14, 18, 19, 39 and 43 of Part X of the Verification Annex of the Convention are taken to be omitted;

(b) the exit monitoring provisions set out in paragraph 46 (1) (c) of the Act and in paragraphs 23 to 31 (inclusive) of Part X of the Verification Annex of the Convention are taken to be omitted;

(c) the provisions relating to access to declared facilities set out in paragraphs 15, 51 and 52 of Part X of the

Verification Annex of the Convention are taken to be omitted;

(d) the provisions relating to the perimeter of the site in Part X of the Verification Annex of the Convention are taken to be omitted;

(e) the provisions relating to observers set out in paragraph 12 of Article IX and paragraphs 53 to 56 (inclusive) of Part X of the Verification Annex of the Convention are taken to be omitted;

(f) the provisions relating to the inspection mandate in paragraph 18 of Article IX of the Convention are taken to be varied to require the inspection mandate to be agreed between the Director and the person holding an equivalent position in the State Party seeking clarification before the arrival of the foreign country inspectors in Australia;

(g) paragraph 46 (1) (b) of the Act is taken to be varied to exclude the power of a foreign country inspector to take photographs (including video recordings);

(h) paragraph 46 (1) (e) of the Act is taken to be varied to exclude the power of a foreign country inspector to remove samples from the premises;

(i) paragraph 46 (1) (g) of the Act is taken to be varied to exclude the power of a foreign country inspector to examine a document;

(j) paragraph 46 (1) (h) of the Act is taken to be varied to exclude the power of a foreign country inspector to take extracts from, or make copies of, a document.

PART 4—PRIVILEGES AND IMMUNITIES OF AN INSPECTOR

Application of this Part

10. (1) Subject to subregulation (2), this Part applies to an Organization inspector who:

(a) is in Australia to carry out an inspection under the Convention; or

(b) is passing through Australia on the way to, or when returning from conducting, an inspection outside Australia; or

(c) has left Australia, with respect to acts previously performed in the exercise of his or her official duties.

(2) This Part does not apply to an Organization inspector who is an Australian citizen, except in respect of anything done in his or her capacity as an Organization inspector.

Privileges and immunities of an inspector carrying out an inspection in Australia

11. (1) An Organization inspector is not liable to any form of arrest or detention.

(2) An Organization inspector's living quarters and office premises (including any furnishings and other property in them), means of transport, records, papers and correspondence are not liable to search, requisition, attachment or execution.

(3) Samples and approved equipment in the possession of an Organization inspector are not liable to:

(a) subject to regulation 12—search, requisition, attachment or execution; or

(b) customs duties.

(4) An Organization inspector has immunity from criminal and civil law, except for:

(a) a civil action relating to private immovable property in Australia, unless the inspector holds it on behalf of the Organization for the purposes of the Organization; or

(b) a civil action relating to succession in which the inspector is involved as executor, administrator, heir or legatee as a private person and not on behalf of the Organization; or

(c) a civil action relating to a professional or commercial activity exercised by the inspector in Australia outside his or her official functions.

(5) An Organization inspector is not required to give evidence as a witness.

(6) No measures of execution may be taken against an Organization inspector, except for matters referred to in paragraph (4) (a), (b) or (c).

(7) An Organization inspector carrying out activities under the Convention is exempt from all dues and taxes, whether personal or real, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services; and

(b) dues and taxes on private immovable property in Australia, unless he or she holds the property for the Organization for the purposes of the Organization; and

(c) subject to subregulation (8)—estate, succession or inheritance duties; and

(d) dues and taxes on private income having its source in Australia and capital taxes on investments made in commercial undertakings in Australia; and

(e) charges levied for specific services rendered; and

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property.

(8) Movable property that is in Australia solely due to the presence in Australia of an Organization inspector or a member of the family of an Organization inspector is not liable for estate, succession or death duties.

(9) An Organization inspector may bring into Australia, without payment of customs duties or related charges, any article for personal use except an article the import or export of which is prohibited by law or controlled by quarantine laws.

(10) An Organisation inspector is exempt from currency and exchange restrictions to the same extent as a representative of a foreign government on a temporary mission on behalf of that government.

Samples and approved equipment

12. (1) An Organization inspector who has in his or her possession a sample from a facility in Australia must:

(a) allow a national inspector to take and retain:

(i) a portion of that sample; or

(ii) a duplicate sample; and

(b) if he or she analyses the sample at the facility—allow a national inspector to be present during the analysis.

(2) An Organization inspector must allow a national inspector to inspect his or her inspection equipment on arrival in Australia.

(3) A national inspector may exclude from use or access to an inspection site inspection equipment of an Organization inspector that:

(a) does not meet the description of equipment approved for the inspection; or

(b) does not bear a document or device from the Technical Secretariat authenticating the equipment's designation and approval by the Secretariat.

(4) An Organization inspector must obey all applicable Commonwealth, State and Territory laws relating to the handling and transport of hazardous goods.

Application of the Public Order (Protection of Persons and Property) Act 1971 to Organization inspectors

13. (1) For section 101 of the Act, the privileges and immunities that apply to a protected person under the *Public Order (Protection of Persons and Property) Act 1971* apply to an Organization inspector.

(2) For section 101 of the Act, the privileges and immunities that apply to protected premises under the *Public Order (Protection of Persons and Property) Act 1971* apply to the living quarters and office premises of an Organization inspector.

Waiver

14. If the Organization waives a privilege or immunity set out in a provision of regulation 11 for an Organization inspector, that provision does not apply to that inspector.

PART 5—MISCELLANEOUS

Register of permits and notifications

15. (1) The Register of Permits and Notifications must be maintained in the form of one or more electronic database files.

(2) The structure of the databases in the Register must be sufficient to record information on facilities required for Part 3 and sections 83 and 98 of the Act.

Notices

16. A notice that the Director must give to a person must be given in writing, addressed to the person and delivered, sent by prepaid post, or faxed to the person or the person's last known address.

Reports

17. The Director must provide declarations and reports to the Organization in accordance with Australia's obligations under the Convention.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 23 April 1997.

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