



Crimes (Biological Weapons) Act 1976

Act No. 11 of 1977 as amended

This compilation was prepared on 24 May 2001
taking into account amendments up to Act No. 24 of 2001

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act relating to the Prohibition of the Development, Production and Stockpiling of certain Biological Agents and Toxins and of Weapons for their Delivery

1 Short title [see Note 1]

This Act may be cited as the *Crimes (Biological Weapons) Act 1976*.

2 Commencement [see Note 1]

- (1) Sections 1, 2, 3 and 7 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation, being a day not earlier than the day on which the Convention enters into force for Australia.

3 Interpretation

In this Act, **Convention** means the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, which was signed on behalf of Australia on 10 April 1972, being the Convention a copy of the English text of which is set out in the Schedule.

4 Extension to external Territories

This Act extends to every external Territory.

5 Extra-territorial operation of Act

This Act extends to acts done or omitted to be done by Australian citizens outside Australia and the external Territories.

6 Act binds the Crown

This Act binds the Crown in right of the Commonwealth or of a State.

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

7 Ratification of Convention

Approval is given to ratification by Australia of the Convention.

8 Restriction on development etc. of certain biological agents and toxins and biological weapons

- (1) It is unlawful to develop, produce, stockpile or otherwise acquire or retain:
 - (a) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
 - (b) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (2) A corporation that, or a natural person who, does an act or thing declared by subsection (1) to be unlawful is guilty of an offence and is punishable, on conviction:
 - (a) in the case of a corporation—by a fine not exceeding \$200,000; and
 - (b) in the case of a natural person—by a fine not exceeding \$10,000, or by imprisonment for a specified period or for life, or both.
- (3) An expression that is used in this section and in the Convention has in this section the same meaning as in the Convention.

9 Forfeiture and seizure

- (1) Where any substance or article is developed, produced, stockpiled or otherwise acquired or retained in contravention of subsection 8 (1), the substance or article is forfeited to the Commonwealth.
- (2) A constable may, without warrant, seize any substance or article that is forfeited, or that he has reasonable grounds to believe to be forfeited, to the Commonwealth under subsection (1), and may retain the substance or article until the expiration of a period of 60 days after the seizure or, if a prosecution for an offence referred to in section 10 in relation to the substance or article is instituted before the expiration of that period, until the prosecution is terminated.
- (3) Any substance or article seized in pursuance of subsection (2) shall be stored in accordance with the prescribed procedures.
- (4) In this section, **constable** means a member or special member of the Australian Federal Police or a member of the Police Force of a State or Territory.

10 Prosecutions

- (1) Subject to subsection (2), all offences against this Act (including offences that are taken to have been committed because of section 11.2 of the *Criminal Code*), or against section 11.1 or 11.4 of the *Criminal Code* in relation to this Act, are indictable offences and are not triable summarily.
- (2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for his commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence referred to in subsection (1) may be dealt with in accordance with that law.
- (3) Proceedings for the commitment of a person for trial on indictment for an offence referred to in subsection (1) shall not be instituted except with the consent in writing of the Attorney-General or of a person authorized by the Attorney-General, by writing signed by him, to give such consents.

- (4) Notwithstanding that a consent in accordance with subsection (3) has not been given in relation to an offence referred to in subsection (1):
 - (a) a person may be charged with the offence;
 - (b) a person may be arrested for the offence, and a warrant for such an arrest may be issued and executed; and
 - (c) a person so charged may be remanded in custody or on bail; but no further step in proceedings for the offence shall be taken until such a consent has been given.
- (5) Nothing in subsection (4) prevents the discharging of the accused if proceedings are not continued within a reasonable time.

11 Jurisdiction of courts

- (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with jurisdiction with respect to offences against laws of the Commonwealth has effect, in relation to offences referred to in section 10 of this Act not committed within any State, as if that jurisdiction were so invested without limitation as to locality.
- (2) The trial on indictment of an offence referred to in section 10 not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

12 Evidence of analyst

- (1) The Minister may appoint a person to be an analyst for the purposes of this Act.
- (2) Subject to subsection (4), a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:
 - (a) when and from whom the substance was received;
 - (b) what labels or other means of identifying the substance accompanied it when it was received;
 - (c) what container the substance was in when it was received;
 - (d) a description of the substance received;
 - (e) that he or she has analysed or examined the substance;
 - (f) the date on which the analysis or examination was carried out;

- (g) the method used in conducting the analysis or examination;
 - (h) the results of the analysis or examination;
- is admissible in any proceedings for an offence referred to in section 10 as evidence of the matters in the certificate and the correctness of the results of the analysis or examination.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.
 - (4) A certificate shall not be received in evidence in pursuance of subsection (2) in a proceeding for an offence unless the person charged with the offence has been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceeding.
 - (5) Where, in pursuance of subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he had given evidence of the matters stated in the certificate.
 - (6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:
 - (a) the prosecutor has been given at least 5 days notice of the person's intention to require the analyst to be so called; or
 - (b) the Court, by order, allows the person to require the analyst to be so called.

13 Regulations

The Governor-General may make regulations, not inconsistent with this Act, for and in relation to:

- (a) procedures to be followed in the storage and disposal of substances and articles in respect of which an offence referred to in section 10 has been, or is alleged to have been, committed; and
- (b) providing an opportunity for a person charged with an offence referred to in section 10 in respect of a substance referred to in paragraph 8(1)(a) to have a sample of the

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substance analysed on his behalf within such period (if any)
as is prescribed.

Schedule—Convention on the Prohibition of the Development, Production And Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

Section 3

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognising the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of 17 June 1925,

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere.

Desiring also to contribute to the realisation of the purposes and principles of the Charter of the United Nations,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Recognising that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimise this risk,

Have agreed as follows:

ARTICLE I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- (2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

ARTICLE II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after the entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this Article all necessary safety precautions shall be observed to protect populations and the environment.

ARTICLE III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of the Convention.

ARTICLE IV

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

ARTICLE V

The States Parties to this Convention undertake to consult one another and to co-operate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and co-operation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

ARTICLE VI

(1) Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to co-operate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

ARTICLE VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

ARTICLE VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

ARTICLE IX

Each State Party to this Convention affirms the recognised objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

ARTICLE X

(1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also co-operate in contributing individually or together with other States or international organisations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international co-operation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

ARTICLE XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

ARTICLE XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realised. Such review shall take into account any new scientific and technological developments relevant to the Convention.

ARTICLE XIII

(1) This Convention shall be of unlimited duration.

(2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United

Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

ARTICLE XIV

(1) This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

(2) This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

(3) This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositaries of the Convention.

(4) For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

(5) The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.

(6) This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE XV

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

Table of Acts**Notes to the *Crimes (Biological Weapons) Act 1976*****Note 1**

The *Crimes (Biological Weapons) Act 1976* as shown in this compilation comprises Act No. 11, 1977 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes (Biological Weapons) Act 1976</i>	11, 1977	28 Feb 1977	Ss. 1-3 and 7: Royal Assent Remainder: 1 Mar 1980 (<i>see Gazette</i> 1980, No. S33)	
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 (<i>see s. 2 and Gazette</i> 1979, No. S206)	—
<i>Australian Federal Police (Consequential Amendments) Act 1980</i>	70, 1980	28 May 1980	28 May 1980	—
<i>Crimes Legislation Amendment Act 1992</i>	164, 1992	11 Dec 1992	Part 1 (ss. 1, 2) and Parts 3-11 (ss. 18-53): 8 Jan 1993 Remainder: 1 Feb 1993 (<i>see Gazette</i> 1993, No. GN1)	—
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 12: (a)	S. 4(1), (2)

Act Notes

- (a) The *Crimes (Biological Weapons) Act 1976* was amended by Schedule 12 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.

Table of Amendments

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ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 6A	ad. No. 24, 2001		
S. 9.....	am. No. 155, 1979; No. 70, 1980		
S. 10.....	am. No. 24, 2001		
S. 12.....	am. No. 164, 1992		

Table A

Table A

Application, saving or transitional provisions

*Law and Justice Legislation Amendment (Application of Criminal Code)
Act 2001 (No. 24, 2001)*

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.