

Chemical Weapons (Prohibition) Amendment Regulations 1998 (No. 1) 1998 No. 366

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 366

Chemical Weapons (Prohibition) Act 1994

Chemical Weapons (Prohibition) Amendment Regulations 1998 (No. 1)

The *Chemical Weapons (Prohibition) Act 1994* ("the Act") is the key instrument for implementation of Australia's obligations as 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 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

Under the Convention a State Party has the right to produce or use toxic chemicals and precursors for activities not prohibited under the Convention. However, to provide assurance of compliance with treaty obligations the Convention provides for a verification regime involving annual declarations and a system of on-site inspections, conducted by inspectors of the Organization for the Prohibition of Chemical Weapons ("the Organization") which is based in The Hague, and which is responsible for implementing the Convention.

Section 104 of the Act provides that the Governor-General may make Regulations prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Chemical Weapons (Prohibition) Regulations (No. 84 of 1997) ("the Regulations") prescribe such arrangements in a manner consistent with Australia's obligations under the Convention. In particular, the regulations address administrative and technical matters related to the Act's implementation, and especially its system of permits and notifications.

Since entry into force of the Convention, the Act has been amended to refine administration of the Act. The Amendment Regulations amend the Regulations in light of amendments to the Act. Their purpose is to :

- (i) prescribe details of the system of permits and notifications set up by the Act to facilitate collection of information on industrial and other chemical activities in Australia which must be included in declarations to the Organization;
- (ii) prescribe the meaning of production, processing and consumption in relation to a specified chemical or class of chemicals, and the method of working out the total amount of specified chemicals produced, processed or consumed;
- (iii) prescribe the meaning of the terms *hydrocarbon* and *explosive*;
- (iv) ensure that the Regulations are consistent with subsections 49 (4) and 49 (10) of the Act which provide for the Director of the Chemical Weapons Convention Office ("the Director") to choose which (if any) of a group of prescribed modifications is to apply to an inspection by consent which is carried out pursuant to section 49 of the Act;

(v) specify when an international compliance inspection or a challenge inspection starts and ends; and

(vi) prescribe privileges and immunities to be enjoyed by an observer to a challenge inspection.

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

The Amendment Regulations commence on gazettal.

ATTACHMENT

DETAILS OF AMENDMENTS TO THE CHEMICAL WEAPONS (PROHIBITION) REGULATIONS

Regulation 1 - Name of regulations

1. Regulation 1 provides for the amending regulations to be cited as the *Chemical Weapons (Prohibition) Amendment Regulations 1998 (No. 1)*

Regulation 2 - Commencement

2. Regulation 2 provides for the Regulations to commence on gazettal.

Regulation 3 - Amendment of Chemical Weapons (Prohibition) Regulations

3. Regulation 3 provides for the amendment of the Chemical Weapons (Prohibition) Regulations by Schedule 1 of the Amending Regulations.

SCHEDULE 1 - AMENDMENTS OF CHEMICAL WEAPONS (PROHIBITION) REGULATIONS

Item 1 - Regulation 1 - Name of regulations

4. Item 1 provides for the Regulations to now be cited as the *Chemical Weapons (Prohibition) Regulations 1997*.

Item 2 - Regulation 3 - Heading

5. Item 2 substitutes 'Definitions' as the heading of regulation 3.

Items 3 to 5 - Regulation 3 - Definitions

6. Regulation 3 sets out definitions of terms used by the Regulations. Items 3 and 4 substitute revised definitions in regulation 3 for the terms 'declarable Schedule 1 activity' and 'Schedule 1 activity'. Item 5 inserts several new definitions relating to activities with Convention's Scheduled chemicals.

Item 6 - Regulations 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H - Definitions

7. Section 8B of the *Chemical Weapons (Prohibition) Act 1994* ("the Act") provides for regulations to clarify the meaning of certain terms used in the Act in relation to specified chemicals. Item 6 inserts new regulations 3A. to 3H to clarify the meaning of the term

production, and the terms consumption and processing with respect to Schedule 2 chemicals. Methodology is provided for calculating the amount of scheduled chemicals (regulation 3E for Schedule 1, regulation 3F for Schedule 2 and regulation 3G for Schedule 3) and unscheduled discrete organic chemicals (regulation 3H). Clarification is also provided of the meaning of "explosive" and "hydrocarbon" (regulation 3D).

Item 7 - Part 2

8. Item 7 substitutes new Parts 2 and 2A into the Regulations as follows:

Part 2 - Permits, renewals and notifications

Regulation 4 - Last day for permit applications

9. Section 17 of the Act sets out procedures for applications for permits. These procedures provide for a person to apply to the Minister for a permit to operate a facility during a year by such day as is prescribed. New regulation 4 which sets out the prescribed day.

Regulation 4A - Last day for permit renewal applications

10. Section 20 of the Act sets out procedures for applications for non-automatic renewal of permits. These procedures provide for the holder of a permit to apply to the Minister for a renewal of the permit by such day as is prescribed. New regulation 4A sets out the prescribed day.

Regulation 5 - Manner of production of hydrocarbons or explosives

11. Subsection 28 (7) of the Act provides for regulations to prescribe the manner of production of hydrocarbons and explosives that exclude a facility from the reporting requirement of subsection 28 (6) of the Act. New regulation 5 sets out the manner in which hydrocarbons or explosives may be produced, so that the notification arrangements in subsection 28 (6) do not apply.

Regulation 5A - Last day for notifications

12. Subsection 29 (2) of the Act provides for regulations to prescribe the last day on which certain notifications under section 28 of the Act must be made to the Minister. New regulation 5A sets out the prescribed day.

Part 2A - Reports and records

Regulation 6 - Last day for giving reports

13. Subsection 30 (2) of the Act provides for certain reports to be in an approved form by such day as is prescribed. New regulation 6 sets out the prescribed date for an operator of a Schedule 1, 2 or 3 facility.

Regulation 7 - Records for Schedule 1 facilities

14. Subsection 30 (2) (b) of the Act provides for records to be kept as required by regulations. New regulation 7 specifies the content of the records which are to be kept by the operator of a Schedule 1 facility (as defined in section 7 of the Act).

Regulation 7A - Keeping records for Schedule 1 facilities

15. New regulation 7A specifies the period for which a record mentioned in proposed regulation 7 is to be kept, namely the year to which the information in the record relates, and the next 2 calendar years.

Regulation 7B - Records for Schedule 2 facilities

16. New regulation 7B specifies the content of the records which are to be kept by the operator of a Schedule 2 facility (as defined in section 7 of the Act).

Regulation 7C - Keeping records for a Schedule 2 facility

17. New regulation 7C specifies the period for which a record mentioned in proposed regulation 7B is to be kept, namely the year to which the information in the record relates, and the next 4 calendar years.

Regulation 7D - Records for a Schedule 3 facility

18. New regulation 7D specifies the content of the records which are to be kept by the operator of a Schedule 3 facility (as defined in section 7 of the Act).

Regulation 7E - Keeping records for Schedule 3 facilities

19. New regulation 7E specifies the period for which a record mentioned in proposed regulation 7D is to be kept, namely the year to which the information in the record relates, and the next 2 calendar years.

Regulation 7F - Records for an OCP facility

20. New regulation 7F specifies the content of the records which are to be kept by the operator of an OCP (unscheduled discrete organic chemical production) facility (as defined in section 7 of the Act).

Regulation 7G - Keeping records for an OCP facility

21. New regulation 7G specifies the period for which a record mentioned in new regulation 7F is to be kept, namely the year to which the information in the record relates, and the next 2 calendar years.

Item 8 - Regulation 8

22. A State Party to the Convention, rather than request a challenge inspection, may seek clarification from another State Party, directly or through the Organization, concerning the question of whether there has been a breach of the Convention at particular premises. If a facility or location in Australia is the subject of such a request, the Director may conduct an inspection of the premises. Such inspections may be conducted in the same manner as a challenge inspection, subject to such modifications as are prescribed.

23. Subsection 49 (4) of the Act provides that the Director may choose which (if any) of a group of prescribed modifications is to apply to an inspection by consent. Item 8 amends regulation 8 of the Regulations to set out modifications of the challenge inspection procedure applicable to an inspection of premises by consent.

Item 9 - Regulation 9

24. Subsection 49 (10) of the Act provides that the Director may choose which (if any) of a group of prescribed modifications is to apply to an inspection by consent. Item 9 amends regulation 9 of the Regulations to set out modifications of the challenge inspection procedure applicable to an inspection of premises by consent.

Item 10 - Regulation 9A - International compliance inspection period

25. Subsection 53 (3) of the Act provides for regulations to specify when an international compliance inspection starts and ends. Item 10 inserts new regulation 9A which prescribes when an international compliance inspection commences and ends.

Regulation 9B - Challenge inspection period

26. Subsection 53 (4) of the Act provides for regulations to specify when a challenge inspection starts and ends. Item 10 also inserts new regulation 9B which prescribes when a challenge inspection commences and ends.

Item 11 - Part 4A - Privileges and immunities of an observer

Item 11 - Regulation 14A - Application of Part

- Regulation 14B - Privileges and immunities of an observer

27. Section 101A of the Act provides for regulations to prescribe privileges and immunities to be enjoyed by an observer to a challenge inspection. Item 11 inserts new Part 4A and new regulation 14A which sets out to whom Part 4A applies, and new regulation 14B which prescribes the privileges and immunities applicable to an observer to a challenge inspection.

Regulation 14C - Application of the Public Order (Protection of Persons and Property) Act 1971 to observers

28. Item 11 also inserts new regulation 14C which provides that the privileges and immunities applying to a protected person and protected property under the Public Order (Protection of Persons and Property) Act 1971 apply to an observer and their living quarters and office premises.