**EXPLANATORY STATEMENT**

**Legislative Instrument No. [assigned when lodged], 2020**

Issued by the Authority of the Minister for Foreign Affairs

*Chemical Weapons (Prohibition) Act 1994*

*Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020*

Australia is party to the Convention on the Prohibition of 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, including research, medical, pharmaceutical or protective purposes. Australia’s obligations under the Convention are implemented by the *Chemical Weapons (Prohibition) Act 1994* (the Act) and the *Chemical Weapons (Prohibition) Regulations 1997* (the Principal Regulations).

Section 104 of the Act provides, in part, 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.

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”.

The 24th Conference of States Parties to the Convention in 2019 decided to list four additional Schedule 1 chemicals/chemical families in the Annex on Chemicals to the Convention. The chemicals have no known industrial use but could be used for chemical warfare or terrorism purposes.

The *Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020* are as set out in the Principal Regulations amendments made to the Annex of Chemicals to the Convention on 27 November 2019 and as advised by the Director-General of the Organisation for the Prohibition of Chemical Weapons on 10 December 2019. Details of the Regulations are set out in Attachment A.

The Office of Best Practice Regulation (OBPR) advised on 20 January 2020 that a Regulation Impact Statement (RIS) was not required (OBPR ID number: 25580). As there is no known commercial activities involving these chemicals in Australia, regulating the additional chemicals/families of chemicals would likely have no more than a minor impact. The Australian Safeguards and Non-Proliferation Office consulted more than two hundred organisations before the Conference of States Parties in November 2019; organisations were provided with an opportunity to comment on the proposed addition of new chemicals/chemical families to the Annex of Chemicals to the Convention. No organisation expressed concern about the potential regulation of these chemicals/chemical families.

A Statement of Compatibility with Human Rights is included at Attachment B. The Regulations have been assessed as compatible with Australia’s human rights obligations as they promote the protection of the applicable rights and freedoms.

The Regulation commences on 7 June 2020 and is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ATTACHMENT A

**Details of the *Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020***

Section 1 – Name of the Regulations

This section would provide that the title of the Regulations is the *Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020*.

Section 2 – Commencement

This section would provide for the Regulations to commence on 7 June 2020.

Section 3 – Authority

This section would provide that the Regulation is made under the authority of the *Chemical Weapons (Prohibition) Act 1994*.

Section 4 – Schedules

This section would provide that 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.

Schedule 1 – Amendments

This schedule inserts four chemicals/classes of chemicals into the Annex of Chemicals to the Convention. The changes were approved by the Conference of the States Parties to the Convention on 27 November 2019 and will enter into force for all States Parties on 7 June 2020.

ATTACHMENT B

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020*

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Disallowable Legislative Instrument**

The *Chemical Weapons (Prohibition) Act 1994* (the Act) gives effect to certain obligations that Australia has to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Convention).

On the 27 November 2019, the Annex of Chemicals to the Convention was amended to include new chemicals and classes of chemical nerve agents known as ‘Novichok’ agents. The changes proposed in the *Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020* seek to implement the amendments to Annex of Chemicals to the Convention for Australia to include four new classes off chemicals known as ‘Novichok’ agents.

**Human rights implications**

This Disallowable Legislative Instrument engages the following rights:

* Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) – Right to life
* Article 7 of the ICCPR, and the Convention Against Torture (CAT) – Prohibition on torture and cruel, inhuman and degrading treatment or punishment.

**Right to life and the prohibition on torture and cruel, inhuman and degrading treatment or punishment**

Article 6(1) states that every human being has the inherent right to life. The right to life prohibits countries and agents of countries from depriving a person of life arbitrarily or unlawfully. It obliges countries to take appropriate steps to protect the right to life, investigate arbitrary or unlawful killings and punish offenders.

Article 7 of the ICCPR and the CAT contain the prohibition on torture or cruel, inhuman or degrading treatment or punishment.

Novichok nerve agents are chemicals that have no known industrial use, but can cause severe pain, incapacitation and death upon exposure. Novichok nerve agents are both highly toxic and highly persistent in the environment. A single use of these chemicals against a population can lead to gross contamination and can cause multiple exposures over a prolonged period. Unregulated, Novichok nerve agents would limit the right to life and the prohibition on torture and cruel, inhuman and degrading treatment of punishment (ill treatment).

These nerve agents came to international attention and condemnation when used in an attempted assassination in the United Kingdom in 2018. Exposure to the Novichok nerve agent resulted in one fatality and the severe pain and suffering of a number of other people, including the intended target, his daughter and a first responder.

The Novichok incidents in Salisbury and Amesbury in 2018 cost the United Kingdom millions of pounds in response, treatment and decontamination. With no known industrial use, but a high potential for these chemical nerve agents to cause pain, injury and loss of life, the States Parties to the Convention voted in November 2019 to add them to the Annex on Chemicals controlled under the Convention. Through the proposed amendment regulations, Australia seeks to update the *Chemical Weapons (Prohibition) Regulations 1997* to implement the changes made to the Convention and protect the right to life and prohibition on torture and ill treatment.

Although there are no known legitimate industrial uses of Novichok nerve agents, amendment of the *Chemical Weapons (Prohibition) Regulations 1997* enables the Australian Safeguards and Non-Proliferation Office to regulate these chemicals. Companies seeking to use these chemicals in the future would be able to apply for a permit from the Australian Safeguards and Non-Proliferation Office to do so. Conditions of their permit would be required for them to meet a number of obligations under the C*hemical Weapons (Prohibition) Act 1994*.

Amending the *Chemical Weapons (Prohibition) Regulations 1997* to implement changes to the Annex of Chemicals to the Convention allows Australia to regulate the use of these chemicals in Australia, in line with the other States Party to the Convention. This protects the public against the use of this class of chemical nerve agents in Australia, or by Australians abroad, thereby protecting the public from potential torture or loss of life due to Novichok chemical nerve agent use and promoting the right to life and the prohibition on torture and ill treatment.

**Conclusion**

The proposed *Chemical Weapons (Prohibition) Amendment (Annex on Chemicals) Regulations 2020* is compatible with human rights because it promotes the right to life and protects the prohibition of a class of chemicals that, if used, could inflict torture and cruel, inhuman or degrading treatment or punishment.