

Chemical Weapons (Prohibition) Act 1996

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Schedule

An Act to implement in the law of New Zealand the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title And Commencement

- (1) This Act may be cited as the Chemical Weapons (Prohibition) Act 1996.
- (2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

Part 1—Preliminary

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Convention means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on the 13th day of January 1993 (a copy of the English text of which is set out in the Schedule to this Act), and includes the Annexes to the Convention and any amendments to, or substitutions of, that Convention or the Annexes that are, or will become, binding on New Zealand from time to time:

International inspector means an individual designated by the Technical Secretariat according to the procedures as set forth in Part 2, Section A, of the Verification Annex,

to carry out an inspection or visit in accordance with the Convention, and includes any inspection assistant as defined in the Convention:

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:

Secretary means the Secretary of Foreign Affairs and Trade.

(2) Terms and expressions used and not defined in this Act but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

3 Act Binds The Crown

This Act binds the Crown.

4 Purpose

(1) The purpose of this Act is to implement New Zealand's obligations under the Convention.

(2) Every person exercising a power or discretion conferred under this Act must have regard to New Zealand's obligations under the Convention.

5 Extraterritorial Application Of Part 2

(1) The provisions of Part 2 of this Act extend to acts done or omitted to be done outside New Zealand—

(a) By any New Zealand citizen or by any person ordinarily resident in New Zealand; or

(b) By any other person on board any New Zealand ship or New Zealand aircraft.

(2) Notwithstanding anything in any other enactment, proceedings in respect of any contravention of Part 2 of this Act anywhere outside New Zealand shall not, by virtue only of the provisions of this Act, be instituted in any Court except with the consent of the Attorney-General and on his or her certificate that it is expedient that the proceedings should be instituted.

(3) Notwithstanding subsection (2) of this section, a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings shall be taken until the Attorney-General's consent has been obtained.

Compare: 1960 No 47, s3(3)

Part 2—Offences

6 Chemical Weapons

(1) Every person commits an offence who intentionally or recklessly—

- (a) Develops, produces, otherwise acquires, stockpiles, or retains chemical weapons; or
- (b) Transfers, directly or indirectly, chemical weapons to another person; or
- (c) Uses chemical weapons; or
- (d) Engages in any military preparations to use chemical weapons; or
- (e) Assists, encourages, or induces, in any way, any person to engage in any activity prohibited to a State Party under the Convention,—

and is liable on conviction on indictment to imprisonment for life or a fine not exceeding \$1,000,000.

(2) Nothing in subsection (1) of this section applies in respect of any seizure of chemical weapons by the Crown under the authority of this or any other Act.

(3) Nothing in subsection (1)(e) of this section limits the provisions of Part 4 of the Crimes Act 1961.

Compare: Chemical Weapons (Prohibition) Act 1994 (Australia) No 26, s12

7 Forfeiture Of Chemical Weapons

If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained, or transferred in contravention of section 6 of this Act, the weapon—

- (a) Is forfeit to the Crown; and
- (b) May be seized without warrant by any officer of the Crown; and
- (c) Shall be stored pending disposal, and disposed of, as the Minister thinks fit.

8 Riot Control Agents

Every person commits an offence who intentionally or recklessly uses riot control agents as a method of warfare, and is liable on conviction on indictment to imprisonment for life or a fine not exceeding \$1,000,000.

9 Schedule 1 Toxic Chemicals

(1) Every person commits an offence who intentionally or recklessly produces, acquires, retains, or uses any Schedule 1 chemical without the consent of the Secretary, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

(2) In determining whether or not to give consent, the Secretary shall be guided by the provisions of Part 6 of the Verification Annex.

10 Imports And Exports Of Toxic Chemicals And Precursors

(1) Except with the consent of the Secretary, the importation into New Zealand, and the exportation from New Zealand, of any toxic chemical or precursor listed in Schedules 1, 2, and 3 of the Annex on Chemicals is hereby prohibited.

(2) In determining whether or not to give consent, the Secretary shall be guided by the restrictions on transfer set out in Parts 6 to 8 of the Verification Annex.

(3) Every person commits an offence who imports or exports any chemical or precursor in contravention of subsection (1) of this section, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

11 Application Of Customs And Excise Act 1996

All the provisions of the Customs and Excise Act 1996 that apply with respect to prohibited imports and prohibited exports (except the penalty for an offence against section 209(1)(a) or (b) of that Act) shall extend and apply with respect to chemicals and precursors whose importation and exportation is prohibited by section 10 of this Act, in all respects as if the importation or exportation of the goods were prohibited under Part 5 of the Customs and Excise Act 1996.

Part 3—Information And Documents

12 Purpose Of This Part

(1) The purpose of this Part of this Act is to ensure—

(a) That toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited under the Convention; and

(b) That the Secretary has knowledge of dealings with chemicals that facilitates the making of New Zealand's periodic declarations under the Convention; and

(c) That New Zealand is otherwise able to fulfil its obligations under the Convention.

(2) Any power under this Part of this Act may be exercised only for that purpose.

13 Supply Of Information

(1) Any person who produces, acquires, retains, transfers, or uses toxic chemicals or their precursors to which any provision of Parts 6 to 9 of the Verification Annex applies must—

(a) Notify the chemicals and, as the case may be, the facility to the Minister as soon as practicable after this section commences to apply to the chemicals or facility, by giving written notice in a form approved by the Secretary, containing such information as is required by the form; and

(b) Keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put; and

(c) Prepare, from those records, periodic reports relating to the chemicals and the facility in a form approved by the Secretary; and

(d) Send those periodic reports to the Secretary at intervals specified by the Minister or by regulation.

(2) The records and reports under subsection (1)(b) to (d) of this section must be sufficient to satisfy the Minister that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.

(3) Every person who refuses or fails, without reasonable excuse, to comply with subsection (1) of this section commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

14 Secretary May Seek Information

(1) This section applies if the Secretary considers that any person is capable of giving information that is relevant to—

(a) A declaration required to be given by New Zealand to the Organization under the Convention; or

(b) The implementation of the Convention or the enforcement of this Act.

(2) The Secretary may, by written notice given to a person, require the person to give such information to the Secretary,—

(a) If the person is a natural person, by writing signed by the person; or

(b) If the person is a body corporate, by writing signed by an officer authorised to sign on behalf of the body corporate,—

within such reasonable period and in such manner as is specified in the notice.

(3) The Secretary may, by written notice given to a person, require the person to give to the Secretary particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice.

(4) Every person who, without reasonable excuse, fails to comply with a notice under this section to the extent that the person is capable of complying with it commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

(5) The power of the Secretary under this section to require a person to give information or documents to the Secretary is in addition to any obligation to give information or documents that the person may have under section 13 of this Act.

Compare: Chemical Weapons (Prohibition) Act 1994 (Australia) No 26, s31

15 False Or Misleading Statements And Documents

Every person commits an offence who, in any document prepared pursuant to this Part of this Act, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

Part 4—Inspections

16 Purpose Of This Part

The purpose of this Part of this Act is to facilitate inspections under the Convention by—

- (a) Confirming the right of international inspectors to inspect facilities and other places in New Zealand in accordance with the Convention and any facility agreement; and
- (b) Enabling New Zealand officers to secure access for any international inspector where consent cannot be obtained; and
- (c) Enabling New Zealand officers to accompany or assist any international inspector.

Access By International Inspectors

17 Verification Of Toxic Chemicals

All toxic chemicals and their precursors listed in Schedules 1, 2, and 3 of the Annex on Chemicals, facilities related to such chemicals, and other facilities and places as specified in the Verification Annex, are hereby declared to be subject to verification measures as provided in the Convention.

18 Inspections

Every person must permit an international inspector to—

- (a) Enter any place in New Zealand—
 - (i) In respect of which any provision of Parts 6 to 9 of the Verification Annex applies; or
 - (ii) That is subject to an on-site challenge inspection referred to in paragraph 8 of Article IX of the Convention; or
 - (iii) In respect of which an investigation under paragraph 9 of Article X of the Convention has been initiated; and
- (b) Inspect the place pursuant to the Convention and, in the case of any facility, any applicable facility agreement; and
- (c) Exercise, in connection with the inspection, any function contemplated, and exercise any power provided for, in the Convention and, in the case of any facility, any applicable facility agreement.

19 Persons Who May Accompany International Inspectors

In order to facilitate inspections, an international inspector may be accompanied by—

- (a) An observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention;
- (b) Any person appointed by the Minister under section 21 of this Act;
- (c) Any member of the Police.

Directions

20 Ministerial Directions

- (1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under the Convention.
- (2) Every person commits an offence who wilfully fails to comply with any direction given by the Minister under this section, and is liable on summary conviction to a fine not exceeding \$100,000.

New Zealand Assistance With Inspections

21 Appointment Of New Zealand Officials

The Minister may appoint any person to accompany or assist any international inspector.

22 Identification Certificates

The Minister may issue a certificate identifying any international inspector or other person authorised to accompany or assist any international inspector.

Enforcement

23 Search Warrants

- (1) Any member of the Police, or other person appointed under section 21 of this Act, may apply for a search warrant where the consent of the person who is in control of any place cannot be obtained.
- (2) Subject to subsection (3) of this section, a District Court Judge, duly authorised Justice, a Community Magistrate, or a Registrar (not being a member of the Police), who is satisfied that there are reasonable grounds for believing that—
 - (a) A place referred to in section 18 of this Act meets the conditions for entry described in that section; and
 - (b) Entry to the place is necessary for the purpose of exercising any function contemplated, or any power provided for, in the Convention or any applicable facility agreement; and
 - (c) The consent of the person who is in control of the place cannot be obtained,—
may issue, unconditionally or subject to conditions, a warrant authorising the entry of the place, at any time within 14 days of the issue of the warrant (or within such further time as may be specified in the warrant) by the international inspector (and any person authorised to accompany the international inspector), for the purpose of exercising any function contemplated, or any power provided for, in the Convention or any applicable facility agreement.
- (3) The person applying for a warrant under subsection (2) of this section—
 - (a) Must first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the place concerned, and (if so) the following matters:
 - (i) The offence or offences (if any) alleged in respect of each application; and

- (ii) The results of each application; and
- (b) Must disclose on the application for the warrant the results of the inquiries.

24 Use Of Force

If force is required to enter and inspect any place specified in a warrant (whether by breaking down a door or otherwise), or in breaking open anything in the place, a member of the Police, or other person appointed under section 21 of this Act, who accompanies an international inspector may use such force as is reasonable in the circumstances.

25 Obligations Of Persons Accompanying International Inspectors

Every member of the Police, or other person appointed under section 21 of this Act, who accompanies an international inspector on any inspection—

- (a) Must carry his or her identification certificate; and
- (b) Must produce it to any person appearing to be in charge of the place entered—
 - (i) On entering the place (if such a person is then present); and
 - (ii) At any reasonable time thereafter, if asked to do so by the person; and
- (c) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection concerned has been completed, must, as soon as is practicable after completing the inspection, give an occupier or person in charge of the place a written notice stating that the place has been entered, and specifying the following matters:
 - (i) The time and date of entry;
 - (ii) The circumstances and purpose of entry;
 - (iii) The name of every person entering; and
- (d) Must have any warrant with him or her and produce it if required to do so; and
- (e) Where any thing is seized, must give an occupier or person in charge of the place a written inventory of all things so seized; and
- (f) Must report any offence or suspected offence to the Police as soon as practicable.

26 Obstruction Of International Inspectors

- (1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$20,000, who wilfully obstructs, hinders, resists, or deceives any international inspector who is exercising in New Zealand any function contemplated, or any power provided for, in the Convention.
- (2) Nothing in this section applies to a refusal to give consent to entry by an international inspector who is not acting pursuant to a search warrant.

Part 5—Miscellaneous Provisions

27 Confidentiality

- (1) Every person must keep confidential any information that is given pursuant to this Act or the Convention concerning the affairs of another person.

- (2) Such information may be disclosed only with the consent of the person to whose affairs it relates or for the purpose of—
- (a) Enabling New Zealand to fulfil its obligations under the Convention; or
 - (b) The enforcement of this Act; or
 - (c) Dealing with an emergency involving public safety.
- (3) Every person who contravenes this section commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

28 Self-Incrimination

- (1) A person is not excused from answering a question or giving any information or document under this Act or the Convention on the ground that to do so may incriminate or tend to incriminate that person.
- (2) A self-incriminating statement made or given under this Act or the Convention is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that statement.

Compare: 1993 No 105, s267

29 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) Providing for any matter that is necessary or desirable for the purpose of implementing the Convention or any agreement that is concluded between New Zealand and the Organization pursuant to the Convention;
 - (b) Prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$5,000, that may, on summary conviction, be imposed in respect of any such offence;
 - (c) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) The Governor-General may from time to time, by Order in Council,—
- (a) Amend the Schedule to this Act by making such amendments to the text of the Convention set out in that Schedule as are required to bring that text up to date;
 - (b) Revoke the Schedule to this Act, and substitute a new Schedule setting out in an up-to-date form the text of the Convention set out in that Schedule.
- (3) Any order made under subsection (2) of this section shall be deemed to be a regulation for the purpose of the Regulations (Disallowance) Act 1989.

Compare: 1968 No 36, s10A; 1987 No 86, s26; 1994 No 119, s55(2), (3)

30 Application To Tokelau

The Governor-General may, by Order in Council, bring this Act into force in Tokelau with such modifications as may be necessary.

31 Amendment To Diplomatic Privileges And Immunities Act 1968

Section 10A of the Diplomatic Privileges and Immunities Act 1968 (as inserted by section 26 of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Confer upon any persons to whom Part 2, Section B of the Verification Annex to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction applies (which Convention is set out in the Schedule to the Chemical Weapons (Prohibition) Act 1996) such additional privileges and immunities as are required by that Convention; and”.

Schedule
Section 2(1)

[The Convention On The Prohibition Of The Development, Production, Stockpiling And Use Of Chemical Weapons And On Their Destruction]