

**Comparison of the Chemical Weapons (Convention) Bill
to the Australian Chemical Weapons (Prohibition) Act 1994
and the UK Chemical Weapons Act 1996**

Introduction

In drafting the Chemical Weapons (Convention) Bill (the CWC Bill), the Administration made reference to the relevant legislation made by Australia and the United Kingdom, i.e. the Australian Chemical Weapons (Prohibition) Act 1994 (the Australian Act) and the United Kingdom Chemical Weapons Act 1996 (the UK Act). Cross-references to the relevant provisions of the two Acts are set out in the Bill. This note briefly compares the key provisions of the CWC Bill to those of the two Acts. A more detailed comparison is at the Annex.

Control over chemical weapons

2. Clause 5 of the CWC Bill prohibits any person from using, developing producing, possessing, participating in the transfer of, or engaging in military preparations to use a chemical weapon. Contravention of this clause is an offence and the maximum penalty is life imprisonment. Both the Australian and the UK Acts contain similar provisions and the maximum penalty for contravention of those provisions is also life imprisonment.

3. Apart from acts done in Hong Kong, clause 5 also applies to acts done outside Hong Kong by Chinese nationals who are Hong Kong permanent residents¹. Provisions on extra-territorial application are also included in both the Australian and the UK Acts.

4. Clause 7 of the CWC Bill requires a person who finds an article which he believes may be a chemical weapon to notify the relevant authority as soon as practicable. Similar provision is included in the Australian Act.

Control over chemicals intended for peaceful uses

5. In respect of chemicals listed in the Schedules to the Chemical Weapons Convention (the Scheduled chemicals), the CWC Bill introduces a permit system under which a facility operator needs to have a permit if he is

¹ The Chemical Weapons Convention requires that each State Party shall extend its legislation to any activities prohibited by the Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

likely to produce, acquire, retain, use, transfer, process or consume any Scheduled chemicals for peaceful purposes and the amount exceeds the relevant threshold. The permit system is modelled on and almost identical to that provided for in the Australian Act. The UK Act, on the other hand, only imposes licensing control on the production and possession of Schedule 1 chemicals.

6. For discrete organic chemicals that are not listed in the Schedules to the Chemical Weapons Convention (unscheduled discrete organic chemicals), the CWC Bill requires a facility operator to make a notification if he produced in the preceding year such chemicals and the total amount exceeded 200 tonnes or 30 tonnes depending on the types of the chemicals. This notification requirement is modelled on and almost identical to that provided for in the Australian Act. The UK Act, on the other hand, does not impose any control on unscheduled discrete organic chemicals.

7. Under the CWC Bill, a facility operator who holds a permit or who is obliged to give a notification as mentioned in paragraphs 5 and 6 above is required to make periodic reports and keep records. Similar requirements are included in the Australian Act.

Miscellaneous provisions

8. For the purpose of preparing the declarations required under the Chemical Weapons Convention, the CWC Bill empowers specified officers to require a person to produce or furnish any information or documents that are relevant to such a declaration. Similar powers are conferred on the relevant authorities under both the Australian and the UK Acts.

9. The CWC Bill, the Australian Act and the UK Act all provide for forfeiture of chemical weapons, empower the relevant authorities to issue authorisation for the Chemical Weapons Convention Secretariat to conduct inspections, and prohibit unauthorised disclosure of information obtained under the respective legislation.

Conclusion

10. The Administration believes that the requirements introduced by the CWC Bill are comparable to those imposed by the Australian Chemical Weapons (Prohibition) Act 1994 and the United Kingdom Chemical Weapons Act 1996.

Detailed Comparison

Note: This comparison table is prepared on the basis of the Administration’s best understanding of the Australian and the UK Acts. It summarizes the relevant provisions of the two Acts where appropriate. Readers should refer to the original texts of the Acts for the detailed conditions under which the relevant provisions apply.

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
<i>1. Offences relating to chemical weapons</i>		
<p><u>Clause 5</u> - No person shall use, develop, produce, possess, participate in the transfer of, or engage in military preparations to use a chemical weapon. [cf. 1996 c. 6 s.2(1) U.K.]</p>	<p><u>Section 12</u> - A person must not, intentionally or recklessly, develop, produce, acquire, stockpile, retain, transfer, use , or engage in military preparations to use a chemical weapon.</p>	<p><u>Section 2(1)</u> - No person shall use, develop, produce, possess, participate in the transfer of , or engage in military preparations to use a chemical weapon.</p>
<p><u>Clause 29(1)</u> - A person who contravenes section 5 commits an offence. Maximum penalty is life imprisonment. [cf. 1996 c. 6 s.2(8) U.K.]</p>	<p>Maximum penalty for contravention of this section is life imprisonment.</p>	<p><u>Section 2(8)</u> - A person contravening section 2 is guilty of an offence. Maximum penalty is life imprisonment.</p>
<p><u>Clause 29(2)</u> - It is a defence if a person charged with an offence relating to clause 5 can prove that he:</p>		<p><u>Section 2(6)</u> - It is a defence if a person charged with an offence relating to section 2(1) can prove that he:</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
<p>(i) neither knew nor suspected nor had reason to suspect that the article involved was a chemical weapon; or</p> <p>(ii) he knew or suspected the article to be a chemical weapon and had taken all reasonable steps to inform an authorized officer of his knowledge or suspicion as soon as practicable.</p> <p><i>[cf. 1996 c. 6 s.2(6) U.K.]</i></p>		<p>(i) neither knew nor suspected nor had reason to suspect that the article involved was a chemical weapon; or</p> <p>(ii) he knew or suspected the article to be a chemical weapon and had taken all reasonable steps to inform an authorized officer of his knowledge or suspicion as soon as reasonably practicable.</p>
<p>2. Extra-territorial application</p>		
<p><u>Clause 6</u> - Section 5 applies to acts done in Hong Kong, as well as acts done outside Hong Kong by Chinese nationals who are Hong Kong permanent residents.</p> <p><i>[cf. 1996 c. 6 s.3(1), (2) & (5) U.K.]</i></p>	<p><u>Section 5</u> - The Act extends to acts done or omitted to be done by an Australian citizen outside Australia and the external Territories or to acts done on board Australian ships and aircraft.</p>	<p><u>Section 3</u> - Section 2 of the Act applies to acts done in the UK, acts done outside the UK by UK nationals, Scottish partnerships and bodies incorporated under the law of any part of the UK, or by Order in Council to acts done outside the UK by bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
3. Notification of finding of articles believed to be chemical weapons		
<p><u>Clause 7(1)</u> - A person who finds an article which he believes may be a chemical weapon shall notify as soon as practicable a member of the Customs and Excise Service or an authorized officer.</p> <p><i>[cf. Chemical Weapons (Prohibition) Act 1994, s.13, Commonwealth of Australia]</i></p> <p><u>Clause 29(4)</u> - A person who contravenes section 7(1) commits an offence. Maximum penalty is a fine at level 6 (currently equivalent to \$100,000) and imprisonment for 6 months.</p>	<p><u>Section 13</u> - A person who finds a substance or article that he believes may be a chemical weapon must immediately notify the Director of the Chemical Weapons Convention Office or a constable.</p> <p>Maximum penalty for contravention of this section is imprisonment for 1 year.</p>	<p>No corresponding provisions.</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
4. Permit requirements relating to Scheduled chemicals		
<p><u>Clause 8</u> - A facility operator requires a permit if in a year he is likely to -</p> <ul style="list-style-type: none"> (i) produce any Schedule 1 chemicals irrespective of the quantity; or acquire, retain, use or transfer Schedule 1 chemicals and the total amount of these chemicals exceeds 100 grams; or (ii) produce, process or consume a Schedule 2 chemical and the total amount of the chemical exceeds the relevant threshold; or (iii) produce a Schedule 3 chemical and the total amount exceeds 30 tonnes. <p><i>[cf. Chemical Weapons (Prohibition) Act 1994, s.16, Commonwealth of Australia]</i></p> <p><u>Clause 30</u> - A person operating a facility in contravention of the requirements of section 8 commits an offence. Penalties range from a fine at level 6 (currently equivalent to \$100,000) and imprisonment for 1 year (in relation to Schedule 3 chemicals), to a fine of \$500,000 and imprisonment for 5 years (in relation to Schedule 1 chemicals).</p> <p><i>[cf. Chemical Weapons (Prohibition) Act 1994, s.77, Commonwealth of Australia]</i></p>	<p><u>Section 16</u> - A facility operator requires a permit if in a year he is likely to -</p> <ul style="list-style-type: none"> (i) produce any Schedule 1 chemicals irrespective of the quantity; or acquire, retain, use or transfer Schedule 1 chemicals and the total amount of these chemicals exceeds 100 grams; or (ii) produce, process or consume a Schedule 2 chemical and the total amount of the chemical exceeds the relevant threshold; or (iii) produce a Schedule 3 chemical and the total amount exceeds 30 tonnes. <p><u>Section 77(1)-(3)</u> - A person who intentionally or recklessly operates a facility in contravention of the requirements of section 16 commits an offence. Penalties range from a fine of 250 penalty units (approximately HK\$110,000) (in relation to Schedule 3 chemicals) to a fine of 500 penalty units (approximately HK\$220,000) and imprisonment for 5 years (in relation to Schedule 1 chemicals).</p>	<p><u>Section 19</u> - No person shall use, produce or have in his possession a Schedule 1 chemical for purposes permitted under the Convention, unless the person has been granted a licence by the Secretary of State.</p> <p>Maximum penalty for contravention of this section is a fine (amount not specified in the Act).</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
5. Notification requirement relating to unscheduled discrete organic chemicals		
<p><u>Clauses 11(1)(a) and 11(2)</u> - A facility operator is required to notify the Director-General of Trade and Industry if he produced in the preceding year -</p> <ul style="list-style-type: none"> (i) any unscheduled discrete organic chemicals and the total amount exceeded 200 tonnes; (ii) unscheduled discrete organic chemicals that contain phosphorus, sulphur or fluorine and the total amount exceeded 30 tonnes. <p>The requirement above does not apply if the facility concerned only produced hydrocarbons or explosives in the preceding year.</p> <p>[<i>cf. Chemical Weapons (Prohibition) Act 1994, s.28(6) & (7), Commonwealth of Australia</i>]</p> <p><u>Clause 31(1)</u> - A facility operator who without reasonable excuse contravenes section 11(1)(a) commits an offence. Maximum penalty is a fine at level 6 (currently equivalent to \$100,000) and imprisonment for 1 year.</p>	<p><u>Section 28(6) and (7)</u> - A facility operator is required to notify the Minister if he produced in the preceding year -</p> <ul style="list-style-type: none"> (i) any unscheduled discrete organic chemicals and the total amount exceeded 200 tonnes; (ii) unscheduled discrete organic chemicals that contain phosphorus, sulphur or fluorine and the total amount exceeded 30 tonnes. <p>The requirement above does not apply if the facility concerned only produced hydrocarbons or explosives in the preceding year.</p> <p><u>Section 29(3)</u> - A facility operator who without reasonable excuse refuses or fails to notify the facility to the Minister commits an offence. Maximum penalty is imprisonment for 1 year.</p>	<p>No corresponding provisions.</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
6. Requirements to make periodic reports and keep records		
<p><u>Clause 11(1)(b)</u> - A facility operator who is obliged to give a notification under section 11(1)(a) is required to keep the relevant records.</p> <p><u>Clause 12</u> - A facility operator who holds a permit shall keep relevant records, and to make periodic reports on the facilities and chemicals concerned. [<i>cf. Chemical Weapons (Prohibition) Act 1994, s.30(1)(a) & (2), Australia</i>]</p> <p><u>Clause 31(1)</u> - A facility operator who without reasonable excuse contravenes section 11(1)(b) or 12(2) commits an offence. Maximum penalty is a fine at level 6 (currently equivalent to \$100,000) and imprisonment for 1 year.</p>	<p><u>Section 30(1) and (2)</u> - A facility operator who holds a permit or who has notified the facility to the Minister must keep the relevant records, and make periodic reports.</p> <p><u>Section 30(3)</u> - A person who without reasonable excuse refuses or fails to comply with this section commits an offence. Maximum penalty is imprisonment for 2 years.</p>	<p><u>Section 22(1) and (2)</u> - The Secretary of State may by notice served on any person who is within a specified description to require that person to give such specified information as the Secretary has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Convention, or to keep specified records.</p> <p><u>Section 22(3)</u> - A person who without reasonable excuse fails to provide the specified information or keep the specified records commits an offence. Maximum penalty is a fine (amount not specified in the Act).</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
7. Power to demand information for the purposes of compiling declarations to the Chemical Weapons Convention Secretariat		
<p><u>Clause 13(1)-(4)</u> - The Director-General of Trade and Industry may by notice in writing require a person to give information and documents that are relevant to the preparation of a declaration relating to chemicals required under the Convention. <i>[cf. Chemical Weapons (Prohibition) Act 1994, s.31(1), (2), (3) & (5), Commonwealth of Australia]</i></p> <p><u>Clause 14(1)(c)(iv)</u> - A member of the Customs and Excise Service or an authorized officer may require the production or furnishing of any information that is relevant to a declaration required under the Convention.</p> <p><u>Clause 31(2)</u> - A person who without reasonable excuse fails to provide the information or documents under section 13(2) or (3) commits an offence. Maximum penalty is a fine at level 6 (currently equivalent to \$100,000) and imprisonment for 1 year.</p>	<p><u>Section 31(1)-(3) and (5)</u> - The Director of the Chemical Weapons Convention Office may by notice require a person to give information and documents that are relevant to the preparation of a declaration required under the Convention.</p> <p><u>Section 31(4)</u> - A person who without reasonable excuse, intentionally or recklessly, refuses or fails to provide the information or documents under section 31 commits an offence. Maximum penalty is imprisonment for 1 year.</p>	As above.

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
<p><u>Clause 35(1)(b)</u> - A person who fails to comply with any requirement, direction or demand given or made by a member of the Customs and Excise Service or an authorized officer in the exercise or performance of any such power or duty commits an offence. Maximum penalty is a fine at level 6 (currently equivalent to \$100,000) and imprisonment for 6 months.</p>		
<p><i>8. Forfeiture of chemical weapons</i></p>		
<p><u>Clauses 21 and 22</u> - These clauses specify that articles seized in connection with an offence under the Bill and certain vessels and vehicles used in connection with an offence under the Bill are liable to forfeiture, and the court upon a hearing may determine whether the article, vessel and vehicle concerned, as the case may be, shall be forfeited to the Government or returned to the party concerned.</p> <p><u>Clause 22(9)</u> - The court, if it is satisfied that an article is a chemical weapon, shall upon a hearing order that the article be forfeited to the Government and disposed of, whether by destruction or otherwise, as the Commissioner of Customs and Excise thinks fit.</p>	<p><u>Section 14(1), (3) and (7)</u> - If any chemical weapon is developed, produced, acquired, stockpiled, retained or transferred in contravention of section 12, the weapon is forfeited to the Commonwealth. If a substance or article was seized and the court is satisfied that the substance or article is a chemical weapon, it must order that the substance or article be condemned. A condemned chemical weapon must be destroyed or otherwise dealt with in accordance with approved procedures.</p>	<p><u>Section 30(1) and (2)</u> - The court by or before which a person is convicted of an offence under the Act may order that anything shown to the court's satisfaction to relate to the offence shall be forfeited, and either destroyed or otherwise dealt with in such manner as the court may order. In particular, the court may order the thing to be dealt with as the Secretary of State may see fit.</p>

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9. Authorisation for conducting inspection by the Chemical Weapons Convention Secretariat		
<p><u>Clause 27</u> - This clause empowers the Commissioner of Customs and Excise or a magistrate to issue authorization in respect of an inspection and states the effect of such authorization. [cf. 1996 c.6 s.25 U.K.]</p>	<p><u>Part 5</u> - This Part provides that a national inspector and an Organisation inspector may carry out an inspection and has the right to enter the concerned facility with the consent of the occupier and facility operator concerned, or under a warrant issued by a magistrate upon the application of the national inspector.</p>	<p><u>Section 25</u> - This section empowers the Secretary of State to issue authorization in respect of an inspection and states the effect of such authorization.</p>
10. Prohibition on unauthorized disclosure of information		
<p><u>Clause 28</u> - No information obtained under, or in connection with anything done under, the Ordinance or the Convention where the information relates to a particular business or other activity carried on by a person shall be disclosed, except in certain specified circumstances. [cf. 1996 c.6 s.32(1) & (2) U.K.]</p>	<p><u>Section 102</u> - An eligible person defined in the Act must not directly or indirectly disclose or make record of any confidential information, except in certain specified circumstances.</p>	<p><u>Section 32(1) and (2)</u> - No information obtained under, or in connection with anything done under the Act or the Convention where the information relates to a particular business or other activity carried on by a person shall be disclosed, except in certain specified circumstances.</p>

Chemical Weapons (Convention) Bill	Chemical Weapons (Prohibition) Act 1994, the Commonwealth of Australia	Chemical Weapons Act 1996, the United Kingdom
<p>Clause 34 - A person who discloses information in contravention of section 28 commits an offence. Maximum penalty is a fine of \$200,000 and imprisonment for 2 years.</p>	<p>Section 102(3E) - A person who intentionally or recklessly contravenes this section commits an offence. Maximum penalty is imprisonment for 2 years.</p>	<p>Section 32(4) - A person who discloses information in contravention of this section commits an offence. Maximum penalty is a fine (amount not specified in the Act) and/or imprisonment for 2 years.</p>

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