

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

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 1

Short title [see Note 1]

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

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 4

Extension to external Territories

This Act extends to every external Territory.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976
- SECT 6
Act binds the Crown

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

CRIMES (BIOLOGICAL WEAPONS) ACT 1976
- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976
- SECT 7
Ratification of Convention

Approval is given to ratification by Australia of the Convention.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976
- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

- SECT 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.

CRIMES (BIOLOGICAL WEAPONS) ACT 1976

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