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CRIMES (BIOLOGICAL WEAPONS) BILL 1976

Date Introduced: 18 November 1976  
House: House of Representatives  
Presented By: The Attorney-General, Hon. R.J. Ellicott Q.C., M.P.

SHORT DIGEST OF BILL

Purpose

The Bill approves the ratification by Australia of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction and enacts the necessary provisions required by the Convention for that ratification to occur.

Background

The Convention relates to microbial or other biological agents, or toxins in types or in quantities that have no justification for prophylactic, protective or other peaceful purposes and to weapons and equipment designed to use such agents or toxins for hostile purposes or in armed conflict (Article I).

States Parties to the Convention agree not to develop, produce or stockpile such agents (Article I); to destroy or divert to peaceful purposes within nine months all such agents or toxins in their possession or under their jurisdiction or control (Article II); and not to transfer any such agents or toxins or assist any State or organization to manufacture them (Article III).

The major requirement is in Article IV which provides that each State Party shall take any necessary measures to prohibit and prevent the development, production or stockpiling of any such agents or toxins within its territory, under its jurisdiction or under its control anywhere.

Alleged breaches of the Convention are to be referred to the United Nations Security Council which may investigate them.

The Convention is now in force. Under Article XIV (4) it will enter into force for Australia upon ratification.

Summary

Approval is given by clause 7 to ratification by Australia of the Convention, a copy of which is set out in the Schedule. Clause 7 is to come into operation at Royal Assent (clause 2 (1)).

Clause 8 creates an offence for corporations or natural persons who do acts declared by sub-clause 8 (1) to be unlawful. The unlawful acts consist of developing, producing, stockpiling or otherwise acquiring or retaining the agents or toxins described in the Convention and weapons or equipment designed to use them. Sub-clause 8 (1) repeats exactly the words of Article IV of the Convention in describing the agents and toxins and sub-clause 8 (3) provides that expressions used in the

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Convention and in the clause have the same meaning as they do in the Convention. There are, however, no special interpretation provisions in the Convention, and it will presumably be for an Australian court to decide whether a substance is, or is not, within the meaning of the clause.

The penalties for the offence are set out in sub-clause 8 (2). For a corporation the penalty is a fine not exceeding \$200,000; for a natural person the penalty is a fine not exceeding \$10,000, or imprisonment for life or for a specified period.

Although clause 6 of the Bill binds the Crown in right of the Commonwealth and of the States the offences created by clause 8 (2) only apply to natural persons and corporations and thus, in relation to the Commonwealth and State Governments, the Bill has moral force only.

The Bill extends to the external Territories (clause 4) and covers acts and omissions by Australian citizens outside Australia and the external Territories (clause 5). This is in accordance with the requirements of Article IV requiring prohibition of the unlawful acts within the territory of Australia, under its jurisdiction or under its control anywhere.

Offences against clause 8 (2) and offences of aiding and abetting (Crimes Act, section 5), inciting (Crimes Act, section 7A) or attempts to commit offences (Crimes Act, section 7) may only be prosecuted with the consent of the Attorney-General or a person authorized by him (sub-clause 10 (3)) although charges may be made and persons arrested without such a consent (sub-clause 10 (4)). All such offences are indictable offences and may not be tried summarily (clause 10 (1)) except in accordance with a State or Territory law whereby a person who pleads guilty at committal proceedings may be dealt with by a higher court otherwise than on indictment (clause 10 (2)).

Offences committed within a State are to be dealt with by the State courts; otherwise a court of competent jurisdiction may deal with offences (clause 11).

There are special evidentiary provisions in clause 12 to permit an analyst appointed by the Minister to give a certificate of his analysis of any substance as prima facie evidence if copies have been given to the accused; if so, the analyst may be cross-examined on the contents of the certificate. Regulations may also be made to give the accused the right to have an analysis made of samples of the agent or toxin concerned in the offence. (clause 13 (b)).

Clause 9 deals with forfeiture of substances which are, in the opinion of a Commonwealth, State or Territory policeman, covered by the Bill.

Clause 8 and the other related clauses are to operate on a date to be fixed by Proclamation being a date not earlier than the day the Convention is ratified (clause 2 (2)). The source of legislative power for the Bill is the external affairs power (Constitution, section 51 (xxix)) and this ensures that the obligations of Australia under the Convention are in existence before the provisions of the Bill which depend on these obligations come into operation.

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