

NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT 87 OF 1993

(English text signed by the State President)

[Assented To: 23 June 1993]
[Commencement Date: 16 August 1993]

as amended by:

Non-Proliferation of Weapons of Mass Destruction Amendment Act 50 of 1995
Non-Proliferation of Weapons of Mass Destruction Amendment Act 59 of 1996
Nuclear Energy Act 46 of 1999
Proclamation R16 / GG 23165 / 20020226
Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004
[with effect from 20 May 2005 – Proc. R18/GG 27502/20050415]

NOTE:

The Act has been amended by s. 59 of Act 46/99, by the substitution for the words “Minister of State Expenditure”, wherever they occur, of the words “Minister of Finance”.

ACT

To provide for control over weapons of mass destruction; and the establishment of a Council to control and manage matters relating to the proliferation of such weapons in the Republic; to determine its objects and functions; to prescribe the manner in which it is to be managed and controlled; and to provide for matters connected therewith.

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SCHEDULE - CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT,
PRODUCTION AND STOCKPILING OF BACTERIOLOGICAL (BIOLOGICAL)
AND TOXIN WEAPONS AND ON THEIR DESTRUCTION (1972)

1. Definitions

In this Act, unless the context otherwise indicates -

“Armcor” means the Armaments Development and Production Corporation of South Africa, Limited, established in terms of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968);

“Atomic Energy Corporation”

[Definition of “Atomic Energy Corporation” deleted by s. 59 of Act 46/99]

“biological warfare agent” means living organisms, including viruses or infectious material derived therefrom, which can be used to cause diseases or death in humans, animals or plants and which usually depend for their primary effects on their ability to multiply in the organism attacked;

“board of inquiry” means a board of inquiry appointed under section 11;

“chemical warfare agent” means any chemical, regardless of the origin or method of production thereof, which poses a real or potential risk of being used as a weapon of mass destruction, and which through the specific application of its chemical action on life processes can cause death, temporary incapacity or permanent harm to humans, animals or plants;

“controlled goods” means goods declared as such under section 13 (1);

“Council” means the South African Council for the Non-Proliferation of Weapons of Mass Destruction established under section 4;

“data” includes any data or information of a technical or other nature as well as blueprints, diagrams, plans, models, formulae, engineering designs, specifications, manuals and instructions, whether written or recorded by means of any electronic, magnetic or optical process;

“defensive capability” means the ability to research, develop, procure, produce, maintain or utilize countermeasures, specifically for protection against the effects of weapons of mass destruction, which do not in any way use the mechanisms, technologies, designs or effects associated with a nuclear explosion or the toxic or infective properties of a chemical or

biological warfare agent, and also a related delivery system capable of delivering such weapons;

“delivery system” means any rocket, ballistic missile system, space launch vehicle, sounding rocket or unmanned air vehicle, including a cruise missile, target drone or reconnaissance drone, capable of delivering a payload of at least 500 kilogram over a distance of not less than 300 kilometres;

“Department” means the Department of Trade and Industry;

“Director-General” means the Director-General of the Department;

“dual-purpose capabilities” means those capabilities relating to technology, expertise, service, material, equipment and facilities which can contribute to the proliferation of weapons of mass destruction, but which can also be used for other purposes, including conventional military, commercial or educational use;

“export” means to take or send goods from the Republic to a state or territory outside the Republic or to cause goods to be so taken or sent out;

“facility” means any place, premises, structure, installation or vehicle designed, adapted or equipped for the performance of any process or activity related to controlled goods;

“goods” includes any technology, data, technical assistance, services, software, processes, activities, facilities, substances, materials, items, equipment, components, assemblies or systems, whether produced in the Republic or imported into the Republic;

“government institution” means any -

- (a) body, company or close corporation established by or under any law; or
- (b) other institution or body recognized by the Minister by notice in the *Gazette*;

“import” means to bring goods from outside the Republic into the Republic or to cause goods to be brought into the Republic;

“inspector” means any person appointed as an inspector under section 12;

“Minister” means the Minister of Trade and Industry;

“non-proliferation” means the non-proliferation of weapons of mass destruction;

“permit” means any permit issued under section 13 (2);

“photograph” includes any slide, video, motion picture or X-ray photograph;

“premises” includes any place, facility, structure, installation or vehicle;

“prescribed” means prescribed by regulation;

“proliferation” means the proliferation of weapons of mass destruction;

“re-export” means to export imported goods or to cause imported goods to be exported to a state or territory other than that from which the goods were originally imported;

“regulation” means any regulation made in terms of this Act;

“sample” means the minimum quantity required to carry out the procedures necessary in order to obtain a reliable indication as to the nature or composition of the consignment, batch or whole from which the sample is extracted;

“South African Nuclear Energy Corporation” means the South African Nuclear Energy Corporation, Limited, established by section 3 of the Nuclear Energy Act, 1999;
[Definition of “South African Nuclear Energy Corporation” inserted by s. 59 of Act 46/99]

“system” means a composition of parts or components that fulfil a specific function or collection of functions;

“technical assistance” includes the giving of instructions, teaching of skills, training, imparting working knowledge, consulting services or the transfer of data;

“technology” means any specific information, data or technical assistance required for the design, development, manufacture, deployment, maintenance or use of any weapon of mass destruction, or the execution of any activity related thereto;

“this Act” includes any regulation;

“transit” means the conveyance of goods originating in a state outside the Republic, in any unaltered, processed or altered form, or as a part of goods or a system compiled or produced in the Republic, from one state to another through or over the territory, territorial waters or airspace of the Republic;

“vehicle” means any conveyance used on land, on the sea or in the air;

“weapon of mass destruction” means any weapon designed to kill, harm or infect people, animals or plants through the effects of a nuclear explosion or the toxic properties of a chemical warfare agent or the infectious or toxic properties of a biological warfare agent, and includes a delivery system exclusively designed, adapted or intended to deliver such weapons.

2. Determination of policy

- (1) Subject to subsection (2), the Minister may, by notice in the *Gazette*, determine the general policy to be followed with a view to -
 - (a) the institution of measures and the taking of initiatives to prevent the proliferation and development of weapons of mass destruction;
 - (b) the encouragement of bilateral and multilateral efforts to eliminate weapons of mass destruction;
 - (c) the promotion of free trade with the international community and the minimization of government intervention therein;

- (d) the imposition of a prohibition, whether for offensive or defensive purposes, on the development, production, acquisition, stockpiling, maintenance or transit of any weapon of mass destruction;
- (e) control of the use, transit or export of dual-purpose capabilities;
- (f) the imposition of a prohibition on all nuclear explosions and tests;
- (g) the discouragement of other states to proceed with nuclear explosions and tests;
- (h) the retention of the right of the Republic to the development, maintenance and promotion of -
 - (i) defensive capabilities;
 - (ii) conventional military capabilities which are not dependent upon any toxic, infective or nuclear effects as a means of warfare;
 - (iii) capabilities necessary for domestic law enforcement and riot control;
 - (iv) capabilities in respect of industry, agriculture, research, medicine, pharmaceutical industry and other peaceful purposes.
- (2) The policy contemplated in subsection (1) shall be determined by the Minister after consultation with the Council and with the concurrence of -
 - (a) each Minister charged with the administration of any law which in the opinion of the Minister relates to non-proliferation; and
 - (b) the Minister of Finance.
- (3) Subject to subsection (2), the Minister may at any time, by like notice substitute, withdraw or amend the policy determined in terms of subsection (1).

3. Compliance with policy

Each Minister upon whom, or government institution upon which, any power has been conferred or to whom or which any duty has been assigned in connection with non-proliferation by or under any law, shall exercise such power and perform such duty in accordance with the policy determined in terms of section 2.

4. Establishment of South African Council for Non-Proliferation of Weapons of Mass Destruction

- (1) There is hereby established a Council to be known as the South African Council for the Non-Proliferation of Weapons of Mass Destruction.
- (2) The Council shall consist of -
 - (a) a chairperson and vice-chairperson, who, in the opinion of the Minister, shall be persons with applicable knowledge or experience with regard to matters connected with the objects of the Council;

[Para. (a) substituted by s. 1 of Act 50/95]

(b) an officer of the Department of Foreign Affairs designated by the Minister of Foreign Affairs, and an officer of the Department, designated by the Minister;
[Para. (b) substituted by s. 1 of Act 59/96]

(c) two persons designated by the Minister of Defence;

(d) a person from the chemical industry;

(e) a person from the biological industry;

(f) a person from the space industry;

(g) a person from the nuclear industry;

(h) an employee of or the holder of an office at the Atomic Energy Corporation designated by the Minister of Minerals and Energy; and
[Para. (h) amended by s. 59 of Act 46/99]

(i) such other members as the Minister may deem necessary and who shall have applicable knowledge or experience with regard to matters connected with the objects of the Council,

who shall be appointed by the Minister.

(3) A member of the Council shall hold office for such period, not exceeding five years, as the Minister may determine at the time of his appointment, and shall be eligible for reappointment at the termination of his term of office.

(4) The Minister may at any time terminate the period of office of any member appointed under subsection (2) if there are good reasons for doing so.

(5) The Minister shall fill a casual vacancy on the Council, in the case of -

(a) the chairperson or vice-chairperson, by the appointment of another person as chairperson or vice-chairperson; and
[Para. (a) substituted by s. 1 of Act 50/95]

(b) any other member appointed under subsection (2), by the appointment of another person as a member,

for the unexpired portion of the period for which his predecessor was appointed.

(6) A member of the Council who is not in the full-time employment of the State, shall be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(7) Such officers and employees as are required for the proper performance of the Council's functions shall be designated by the Director-General from the officers and employees of the Department.

5. Objects of Council

The objects of the Council are, subject to the Import and Export Control Act, 1963 (Act No. 45 of 1963), the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), and the Nuclear Energy Act, 1999, and in co-operation and consultation with Armscor and the Minister of Minerals and Energy (acting as the national authority with regard to the implementation of the Safeguards Agreement between the Republic and the International Atomic Energy Agency for the application of the safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons), to control, register and inspect controlled goods, and to verify the import, export, re-export, transit and end-use of controlled goods.

[S. 5 substituted by s. 59 of Act 46/99]

6. Functions of Council

- (1) The Council shall on behalf of the State protect the interests, carry out the responsibilities and fulfill the obligations of the Republic with regard to non-proliferation.
- (2) The Council shall advise the Minister with regard to any matter which it deems necessary and which falls within the purview of this Act.
- (3) In order to achieve its objects the Council may -
 - (a) control and manage all activities relating to non-proliferation, and provide guidance, instructions and information in connection therewith;
 - (b) obtain the co-operation of, exchange information with, and give assistance to, governments of other states, as well as foreign and international bodies having objects similar to those of the Council, and obtain membership of international bodies with such objects;
 - (c) supervise and implement matters arising from international conventions, treaties and agreements related to proliferation affairs entered into or ratified by the Government of the Republic;
 - (d) obtain or promote the co-operation of departments of State, other government institutions, representatives of any branch of commerce and industry and other persons concerned;
 - (e) designate knowledgeable persons from other government institutions and the industry as members of committees of the Council;
 - (f) issue permits under section 13 (2) or suspend or revoke them under section 13 (5);
 - (g) ensure that the conditions of permits and end-use requirements are met, and take the necessary regulatory steps in this regard;
 - (h) administer the registration and making of declarations contemplated in section 13 (3);
 - (i) collect all data and samples it may deem necessary;
 - (j) control the activities and means of transit or re-export, including those relating to goods in transit or in bond;

- (k) institute and co-ordinate investigations, carry out and co-ordinate inspections and verifications;
- (l) verify that controlled goods which are subject to end-use conditions and are imported, are delivered, retained and used in accordance with such conditions and for the intended purpose;
- (m) cause codes of conduct relating to non-proliferation to be framed and issued, and assist any person or department of State in the preparation and framing of codes of conduct aimed at non-proliferation;
- (n) give assistance to any person or authority so as to ensure that trade and commercial secrets are not compromised during the execution of activities related to non-proliferation;
- (o) subject to section 21, provide for the publication of information concerning the activities of the Council;
- (p) identify and indicate to the Minister goods to be declared controlled goods under section 13 (1);
- (q) take the necessary steps to prevent the contravention of the provisions of this Act;
- (r) subject to the provisions of this Act, perform any other function with a view to the efficient achievement of the objects of the Council.

7. Codes of conduct

- (1) The Council may issue codes of conduct stating the principles of non-proliferation, and describing procedures and methods to be followed during the execution of certain activities related to non-proliferation.
- (2) The Council may at any time amend or withdraw any code of conduct.
- (3) The Council shall make a code of conduct or any amendment or withdrawal of a code of conduct known by notice in the *Gazette*.

8. Exercise of powers outside Republic

- (1) The Council may, on such terms and conditions as may be agreed upon, with the approval of the Minister, granted with the concurrence of the Minister of Foreign Affairs, support the activities of any person or authority in any other state related to non-proliferation.
- (2) The provisions of this Act shall, in so far as they can be applied, apply *mutatis mutandis* in connection with the exercise by the Council of its powers in terms of subsection (1) as if the state in which it so exercises its powers were within the Republic.

9. Meetings of Council

- (1) Meetings of the Council shall be held on such dates and at such times and places as the chairperson of the Council may determine.
- (2) The chairperson of the Council may at any time convene a special meeting of the Council by giving notice to the other members of the date, time and place thereof.
- (3) If the chairperson is absent from a meeting of the Council, the vice-chairperson shall preside at that meeting, and if both the chairperson and vice-chairperson are absent from a meeting of the Council, the members present shall elect one of their number to preside at that meeting.
[Sub-s. (3) substituted by s. 2 of Act 50/95]
- (4) The quorum for a meeting of the Council shall be the majority of the members of the Council.
- (5) A decision of the Council shall be taken by a majority of the votes of the members present at a meeting of the Council, and in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to his deliberative vote.
- (6) No decision of the Council or act performed under the authority of the Council, shall be invalid merely by reason of a vacancy on the Council or of the fact that any person not entitled to sit as a member sat as a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members present at the meeting and who were entitled to sit as members.

10. Committees of Council

- (1) The Council may from time to time establish such committees as it may deem necessary, to assist it in the performance of its functions, and may appoint any person as a member of such a committee, even if such a person is not associated with the Council.
- (2) The Council may at any time dissolve a committee established under subsection (1) or terminate the membership of any member of such a committee.
- (3) A member of a committee established under subsection (1) who is not in the full-time employment of the State, shall be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

11. Boards of inquiry

- (1) The Minister may from time to time appoint a board of inquiry to assist him in the adjudication of any matter or any appeal in terms of this Act.
- (2) A board of inquiry shall consist of -
 - (a) (i) a judge as defined in section 1 (1) of the Judges' Remuneration Act, 1989 (Act No. 88 of 1989), or a judge who has been discharged from active service in terms of section 3 of the said Act;
 - (ii) a magistrate or retired magistrate;

- (iii) a person admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
- (iv) a person admitted to practise as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979),

who has knowledge of matters relating to non-proliferation, and who shall be appointed by the Minister as chairperson; and

- (b) as many other persons as the Minister may deem necessary and who shall have applicable knowledge regarding the matter to be investigated by the board of inquiry.
- (3) A session of the board of inquiry shall be held on such date and at such time and place as the chairperson may determine, and he shall inform the Minister and the parties concerned in writing thereof.
- (4) A board of inquiry may, for the purposes of its inquiry -
- (a) summon any person who in its opinion may be able to give material information concerning the subject of the inquiry or who is believed to have in his possession or custody or under his control any book, document, data or thing which has any bearing on the subject of the inquiry, to appear before the board of inquiry on a date and at a time and place specified in the summons, to be interrogated or to produce that book, document, data or thing to the board of inquiry, and retain for examination any book, document, data or thing so produced;
 - (b) call and by its chairperson administer an oath to, or accept an affirmation from, any person present at the inquiry who was or could have been summoned under paragraph (a), and interrogate him and require him to produce any book, document, data or thing in his possession or custody or under his control.
- (5) A summons referred to in subsection (4) (a) shall -
- (a) be in the prescribed form;
 - (b) be signed by the chairperson of the board of inquiry;
 - (c) be issued and served in the prescribed manner.
- (6) A session of a board of inquiry shall be held in public, unless the Minister directs otherwise.
- (7) The findings of a board of inquiry and the reasons therefor shall not be disclosed by the board of inquiry, but shall be conveyed to the Minister in writing.
- (8) A member of a board of inquiry who is not in the full-time employment of the State shall be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

- (9) The Director-General shall designate such number of officers and employees of the Department as may be necessary to assist the board of inquiry with the administrative work relating to its inquiry.

12. Inspectors

- (1) The chairperson of the Council may from time to time in writing appoint as many inspectors as he may deem necessary to ensure that the provisions of this Act are complied with.
- (2) No person shall be appointed under subsection (1) as an inspector unless he is suitably qualified and possesses the necessary expertise to enable him to perform the functions of an inspector in an efficient manner.
- (3) An inspector shall be furnished with a document, signed by the chairperson of the Council, confirming his appointment as an inspector for the purposes of this Act, and such document shall be produced by the inspector at the request of any person who has a material interest in the functions of that inspector.
- (4) An inspector may at any reasonable time -
 - (a) with the necessary equipment enter any premises in or upon which controlled goods are kept or are reasonably suspected to be kept, or in or upon which any activity related thereto is executed or is reasonably suspected to be executed;
 - (b) investigate any such premises or any object or substance which may be found therein or thereupon, or any service or activity being performed or executed therein or thereupon.
- (5) An inspector may at any reasonable time with the necessary equipment enter any premises in or upon which controlled goods are developed, manufactured, stored or kept under a permit, and in relation to those premises, carry out such inspection as he may deem necessary to ascertain whether the conditions of the said permit have been or are being complied with.
- (6) For the purposes of an investigation in terms of subsection (4) or (5), the inspector may be accompanied by such other person or persons as may be indicated in the document confirming his authority.
- (7) If an inspector has in general or in a particular case been instructed thereto by the chairperson of the Council in writing, he may, with the necessary equipment, enter any premises as referred to in subsection (4) or (5), and for the purposes of this Act in relation to such premises -
 - (a) conduct an examination, take measurements, cause samples to be taken, take photographs or remove any other evidence of the existence or former existence of controlled goods used or suspected to be intended for use in the manufacture of weapons of mass destruction, and open any package or container which contains or is suspected to contain controlled goods;
 - (b) examine any activity, operation or process executed or carried on in or upon the said premises;

- (c) at any time demand from any person that he immediately, or at a time and place fixed by the said inspector, produce to him any book, document, data or thing which is in the possession or custody or under the control of that person or any other person on his behalf;
 - (d) examine such book, document, data or thing, and make copies thereof or extracts therefrom if it relates to any controlled goods or activity in respect thereof, or to any permit, and require from any person referred to in paragraph (c) an explanation of any record or entry therein, and seize such book, document, data or thing if in his opinion it may afford evidence of any offence in terms of this Act;
 - (e) with regard to any matter which he is investigating, question, either alone or in the presence of any other person, as he may deem fit, any person whom he finds in or upon the said premises or whom he on reasonable grounds suspects to be or to have been employed in or upon such premises or to have possession or custody of or control over anything referred to in this subsection; and
 - (f) order any person referred to in paragraph (c) or (e) to appear before him at a date, time and place fixed by him, and at that date, time and place question that person with regard to any matter which is being investigated by him.
- (8) Subject to section 21, an inspector and a person accompanying an inspector in terms of subsection (6), shall strictly abide by the provisions set forth in any authorization and code of conduct and fully respect the procedures designed to protect sensitive installations and to prevent the disclosure of confidential information.
- (9) Any person subject to an inquiry, inspection or verification in terms of this Act, may designate any person to accompany an inspector during the execution of an inquiry, inspection or verification.
- (10) No inspector or person accompanying an inspector in terms of subsection (6), shall handle any equipment belonging to a person subject to inspection or shall in person take samples.

13. Controlled goods, permits and registration

- (1) The Minister may, on the recommendation of the Council, whenever he deems it necessary or expedient in the public interest, by notice in the *Gazette* declare goods which may contribute to the design, development, production, deployment, maintenance or use of weapons of mass destruction, to be controlled goods.
- (2) The Minister may in such notice -
 - (a) prohibit the import, export, re-export or transit of such goods;
 - (b) limit or control the import, export, re-export or transit of such goods, and determine that the import, export, re-export or transit of such goods may only take place under a permit issued by the Council;
 - (c) make the import, export, re-export or transit of such goods subject to end use requirements;

- (d) require a declaration to the Council in accordance with the provisions of an international convention, treaty or agreement contemplated in section 27 with regard to the manufacture, procurement in any manner, use, operation, stockpiling, maintenance, transport, import, export, transit or re-export of such goods;
 - (e) prohibit the manufacture, procurement in any manner, use, operation, stockpiling, maintenance, transport or disposal by any means of such goods;
 - (f) make the manufacture, procurement in any manner, use, operation, stockpiling, maintenance, transport or disposal by any means of such goods, subject to a permit issued by the Council.
- (3) Any person who is in control of any activity with regard to controlled goods or who has in his possession or custody or under his control controlled goods, shall -
- (a) register with the Council in the prescribed manner; and
 - (b) if the Council so requests, make a declaration furnishing all information requested by the Council.
- (4) A permit contemplated in subsection (2) may lay down conditions with regard to -
- (a) the quantities of controlled goods provided for by the permit;
 - (b) the end-use requirements and the verification of such end-use requirements of controlled goods;
 - (c) the states or territories to which controlled goods may be exported or from which controlled goods may be imported;
 - (d) the re-export from a state to which controlled goods originating in the Republic, are destined for export;
 - (e) the period for which the permit is valid;
 - (f) the ports, airports or border posts which may be used for the import, export, re-export or transit of controlled goods.
- (5) The Council may at any time, if it has reason to believe that the holder of a permit has contravened or failed to comply with any condition under which the permit was issued, suspend or revoke such permit summarily, and notify the holder of the permit within 30 days in writing of the reasons for such suspension or revocation.
- (6) A suspension under subsection (5) shall remain in force until the holder of the permit has taken measures to the satisfaction of the Council to remove the reasons for the suspension, in which case the Council may cancel the suspension.
- (7) The Minister may at any time suspend or revoke a permit if he deems the activity authorized by the permit to be in conflict with public interests.

- (8) The holder of any permit which has been revoked or has lapsed due to the expiry of the period of validity thereof, shall at the written request of the Council forthwith return that permit to the Council.
- (9) The Minister may, on the recommendation of the Council, whenever he deems it necessary or expedient, by notice in the *Gazette* -
 - (a) for a specified time or indefinitely, prohibit the trade in controlled goods with a specific state or territory or with a specific person domiciled in the Republic or in any other state or territory outside the Republic;
 - (b) for a specified time or indefinitely, prohibit the performance of any act specified in the notice, by a person in the Republic, or by such person in co-operation with a specific person, state or territory outside the Republic;
 - (c) for a specified time or indefinitely, prohibit or limit the export of controlled goods.

14. Furnishing of information and reports

- (1) The Council or any person authorized by the Council may in writing direct any person who designs, develops, manufactures, maintains, markets, imports, exports, re-exports, transits, supplies or stores controlled goods in the course of his business, or trades in or otherwise handles or disposes of any controlled goods, or in any other way exercises control over controlled goods, to furnish the Council within a specified period, or at specified intervals, with any information at his disposal, accompanied by the relevant data and other documents, as indicated in the direction, relating to the design, development, manufacture, maintenance, marketing, import, export, re-export, transit, supply or storage of the said controlled goods.
- (2) The Council shall, upon completion of any investigation, inspection or verification executed under section 12, submit a written report to the Minister containing particulars and recommendations regarding the contravention, or risk of contravention, of any provision of this Act.
- (3) A report in terms of subsection (2) shall only contain facts relating to compliance with the provisions of this Act and, if necessary in order to protect commercial confidentiality, the information therein shall be processed into a less sensitive format before being distributed outside the Council.
- (4) Any person subject to an inspection or verification under section 12, shall be entitled to request an inspection report, setting out the results and findings of such an inspection or verification, from the Council.

15. Submission of samples

- (1) Any person who is required to obtain a permit under section 13 (2), or is required to be registered under section 13 (3), shall at the written request of the Council, within the period stated in the request -
 - (a) transmit to the Council such samples of the goods as may be specified in the request, for examination, testing or analysis; or

- (b) furnish to the Council such information as may be so specified with regard to controlled goods or the design, development and manufacture thereof.
- (2) The Council may cause a sample obtained in terms of subsection (1) (a) or taken under section 12 (7) to be examined, tested or analyzed in a laboratory contracted or appointed by the Department in order to ascertain whether or not -
 - (a) the person concerned has to obtain a permit under section 13 (2) or has to register under section 13 (3);
 - (b) the goods comply with the conditions of the permit issued in respect thereof;
 - (c) the goods are prohibited or limited under section 13 (2).
- (3) The result of any examination, test or analysis of any sample, shall, until the contrary is proved, for all purposes be deemed to be valid for the whole consignment, batch or entity of goods from which the sample was obtained or taken.
- (4) The Council shall not be under any obligation to return any sample received under subsection (1) (a) or taken under section 12 (7) to the owner thereof, or to the place where sampling took place, or to compensate the owner thereof.
- (5) If it is necessary to repeat an examination contemplated in subsection (2), the Department shall bear the cost associated with the taking of the further sample.

16. Seizure of goods

- (1) The Council may direct an inspector to seize or cause to be seized -
 - (a) all controlled goods for which a permit is needed, but in respect of which no application for a permit has been received by the Council;
 - (b) all controlled goods which do not comply with the conditions of a permit;
 - (c) all controlled goods prohibited under section 13;
 - (d) all controlled goods limited under section 13 or the quantity thereof that exceeds the set limit;
 - (e) any book, document, data or thing which may afford evidence of any offence in terms of this Act,

and to remove from the premises concerned any such controlled goods, book, document, data or thing, or any quantity thereof, or if he considers it necessary to leave it there, to affix any identification mark or seal which is considered necessary on such goods, book, document, data or thing or the container thereof.

- (2) Pending a decision regarding the disposal of any controlled goods under section 17, an inspector may remove or cause to be removed such goods, book, document, data or thing seized under subsection (1) to a place of safekeeping designated by the Council.

- (3) An inspector shall furnish the owner or person in control of, or who has in his custody, anything seized in terms of subsection (1), with a receipt.

17. Disposal of goods

- (1) Subject to section 23 and the Hazardous Substances Act, 1973 (Act No. 15 of 1973), the Council may, after 30 days from the date of a notice to this effect in the *Gazette*, cause to be disposed of or destroyed in the prescribed manner any controlled goods, book, document, data or thing seized in accordance with the provisions of an international convention, treaty or agreement with regard to non-proliferation, or seized under section 16 or 26 (2).
- (2) Any disposal or destruction contemplated under subsection (1) shall, in the case of an appeal noted under section 18, be suspended and shall not take place or resume until the result of such an appeal has determined that such disposal or destruction may take place or resume.
- (3) The Department may recover costs incurred in the seizure, safekeeping or disposal of any controlled goods, book, document, data or thing from any person who has been found guilty of an offence under this Act with regard to such goods, book, document, data or thing.

18. Appeal

- (1) Any person aggrieved at any decision of the Council or its delegate under this Act may appeal to the Minister, who may confirm, amend or set aside the decision of the Council or its delegate.
- (2) A decision of the Council or its delegate to suspend or revoke a permit shall not be suspended pending the result of an appeal under subsection (1) against that decision.
- (3) A decision by the Minister with regard to an appeal shall for all purposes be deemed to be a decision of the Council or its delegate.

[S. 18 substituted by s. 3 of Act 50/95]

19. Revision by court of law

- (1) Notwithstanding the provisions of section 18, any person whose interests are affected by a decision of the Council or its delegate may, within 30 days after he or she became aware of such decision, request the Council or its delegate in writing to furnish in writing reasons for that decision within 30 days after receiving such a request.
- (2) Within 30 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons should have been furnished by the Council or its delegate, the person concerned may apply to a division of the Supreme Court having jurisdiction, to review the decision.

[S. 19 substituted by s. 4 of Act 50/95]

20. Delegation

- (1) The Minister may, subject to such conditions as he or she may impose in writing, delegate or assign to the chairperson or vice-chairperson of the Council, a member of the Council, a member of any committee established under section 10, or any officer or

employee of the Department, any power or duty conferred or imposed upon the Minister by or under this Act.

[Sub-s. (1) substituted by s. 5 of Act 50/95]

(2) The Director-General may, subject to such conditions as he may determine, in writing delegate or assign to any officer or employee of the Department any power or duty -

(a) conferred or imposed upon him by this Act; or

(b) delegated or assigned to him under subsection (1), unless the Minister has in his delegation or assignment determined otherwise.

(3) The chairperson of the Council may, subject to such conditions as he or she may determine, in writing delegate or assign to the vice-chairperson or any member of the Council or any officer or employee designated in terms of section 4 (7) any power or duty -

(a) conferred or imposed upon him by this Act; or

(b) delegated or assigned to him under subsection (1), unless the Minister or the Director-General has in his delegation or assignment determined otherwise.

[Sub-s. (3) amended by s. 5 of Act 50/95]

(3A) The vice-chairperson of the Council may, subject to such conditions as he or she may determine, in writing delegate or assign to any member of the Council or any officer or employee designated in terms of section 4 (7) any power or duty -

(a) conferred or imposed upon him or her by this Act; or

(b) delegated or assigned to him or her under subsection (1) or (3), unless the Minister or the chairperson of the Council, as the case may be, has in his or her delegation or assignment determined otherwise.

[Sub-s. (3A) inserted by s. 5 of Act 50/95]

(3B) The Council may, subject to such conditions as it may determine, in writing delegate or assign to any member of the Council, a committee established under section 10 or any officer or employee designated in terms of section 4 (7) any power or duty conferred or imposed upon it by this Act.

[Sub-s. (3B) inserted by s. 5 of Act 50/95]

(3C) A committee established under section 10 may, subject to such conditions as it may determine, in writing delegate or assign to any officer or employee designated in terms of section 4 (7) any power or duty -

(a) conferred or imposed upon it by this Act; or

(b) delegated or assigned to it under subsection (3B), unless the Council has in its delegation or assignment determined otherwise.

[Sub-s. (3C) inserted by s. 5 of Act 50/95]

(4) The Minister, Director-General, chairperson and vice-chairperson of the Council, Council and any committee established under section 10 shall not be divested of any power or exempted from any duty delegated or assigned by him, her or it, and may

amend or set aside any decision taken by a person in the exercise or performance of such power or duty delegated or assigned to him, her or it.

[Sub-s. (4) substituted by s. 5 of Act 50/95]

21. Confidentiality

- (1) A member of the Council, a member of any committee of the Council, any officer or employee of the Department, an inspector or any other person who is or was concerned in the performance of any function in terms of this Act, shall not disclose, transmit or make known to any person, whether within or outside the Republic, any information which he obtained in the performance of such a function or cause such information to be disclosed, transmitted or made known, except -
 - (a) to the Minister;
 - (b) to any person who of necessity requires it for the performance of his functions in terms of this Act or any other law;
 - (c) where he of necessity supplies it in the performance of his functions in terms of this Act;
 - (d) where it is required in terms of any law or as evidence in any court of law;
 - (e) to any competent authority within the Republic, or, with the written consent of the Council, to any authority outside the Republic which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution;
 - (f) by or on the authority of the Minister or the Council.
- (2)
 - (a) If the Minister is of opinion that the disclosure of certain information may compromise the functions of the Council, or the interests of the industry, he may direct that any proceedings, excluding court proceedings, be held in camera.
 - (b) If any court is of opinion that the disclosure of certain information may compromise the functions of the Council, or the interests of the industry, it may direct that any proceedings before it be held in camera.

22. Certain acts not construed as assurances or guarantees

The fact that anything has been done under this Act by the Minister, any member of the Council, any member of a committee of the Council or any person in the employment of the State with regard to any activity or matter, shall not be construed as an assurance or a guarantee of any nature in respect of any such activity or matter.

23. Limitation of liability

The State or any person in the employment of the State, the Minister or the Council shall not be liable in respect of anything done under this Act in good faith and without negligence.

24. Regulations

- (1) The Minister may make regulations regarding -

- (a) the manner in which the functions of the Council shall be performed;
 - (b) the appointment of a person to act for an absent member of the Council;
 - (c) the procedure to be followed when applying for a permit and the disclosure of information related thereto;
 - (d) the conditions under which a permit shall be issued and the disclosure of information related thereto;
 - (e) the issue and application of a code of conduct or any category of codes of conduct;
 - (f) the disclosure of information under section 21 (1);
 - (g) the making of a declaration under section 13 (3);
 - (h) the keeping of records, registers, minutes and financial statements by any person subject to registration, a declaration or a permit under this Act;
 - (i) the format of reports to be furnished to the Minister under this Act;
 - (j) the conditions on which and circumstances under which inspections or investigations shall be executed and the procedure to be followed in connection therewith;
 - (k) the procedure to be followed when goods are seized under section 16 or 26 (2);
 - (l) the application of the provisions of international conventions, treaties and agreements with regard to non-proliferation entered into or ratified by the Government of the Republic;
 - (m) the procedure to be followed in connection with an appeal to the Minister under section 18, and the period within which such an appeal shall be noted;
 - (n) in general, any matter which shall or may be prescribed by or under this Act and which is aimed at achieving the objects of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different categories of goods or persons.
 - (3) Any regulation made under subsection (1) may provide that any person contravening a provision thereof or failing to comply therewith, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding ten years.

25. Annual report by Council

- (1) The Council shall annually submit to the Minister a report on its functions in terms of this Act.
- (2) The report referred to in subsection (1) shall be laid upon the Table in Parliament by the Minister as soon as possible after receipt thereof.

26. Offences and penalties

- (1) Any person who -
 - (a) contravenes or fails to comply with the provisions of a code of conduct issued under section 7;
 - (b) contravenes or fails to comply with the provisions of section 11 (4), 12 (7), 12 (8), 12 (10), 13 (8), 14 (1) or 21;
 - (c) contravenes or fails to comply with the provisions of a notice issued under section 13 (2) or (9), or the conditions of a permit referred to in section 13 (2), read with section 13 (4), or the provisions of section 13 (3) or 15 (1);
[Para. (c) substituted by s. 2 of Act 59/96]
 - (d) falsely represents that any goods or activities fall outside the purview of this Act;
 - (e) makes any statement regarding a matter with which this Act is concerned to an officer or employee of the Department, an inspector or a person authorized by the Council which statement is false in any material respect, knowing it to be false;
 - (f) falsely holds himself out to be an officer or employee of the Department, an inspector or a person authorized by the Council;
 - (g) refuses or fails to answer to the best of his knowledge any question regarding a matter with which this Act is concerned which an officer or employee of the Department, an inspector or a person authorized by the Council has in the exercise of his powers put to him;
 - (h) refuses or fails to comply to the best of his or her ability with any lawful requirement, request or order of an officer or employee of the Department, an inspector or a person authorized by the Council;
[Para. (h) substituted by s. 27 of Act 33/2004]
 - (i) hinders or obstructs an officer or employee of the Department, an inspector or a person authorized by the Council in the exercise of his functions under this Act,
 - (j) intentionally uses, or threatens to use, a weapon of mass destruction against -
 - (aa) a citizen of the Republic or a person ordinarily resident in the Republic, whether that person is in or outside the Republic;
 - (bb) any person within the Republic; or
 - (cc) any property that is owned, leased or used by any such citizen or resident of the Republic or by any public or private body or agency of the Republic, whether the property is within or outside of the Republic, or
[Para. (j) inserted by s. 27 of Act 33/2004]
 - (k) threatens, attempts, conspires with any other person, or aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person, to commit an offence referred to in subparagraph (i),

[Para. (k) inserted by s. 27 of Act 33/2004]

shall be guilty of an offence, and liable on conviction -

- (i) in the case of an offence referred to in paragraph (a) to a fine, or to imprisonment for a period not exceeding five years;
- (ii) in the case of an offence referred to in paragraph (b) to a fine, or to imprisonment for a period not exceeding ten years;
- (iii) in the case of an offence referred to in paragraphs (c) to (e) inclusive to a fine, or to imprisonment for a period not exceeding fifteen years; and
- (iv) in the case of an offence referred to in paragraphs (f) to (i) inclusive to a fine, or imprisonment for a period not exceeding two years.
- (v) in the case of an offence referred to in paragraph (j) or (k), to a fine or to imprisonment for a period up to imprisonment for life.

[Subpara. (v) inserted by s. 27 of Act 33/2004]

- (2) A court convicting any person of an offence referred to in paragraph (b) or (d) may, in addition to any other penalty which it may impose, seize any goods or any consignment or batch of goods, or any other article, or any material or substance, in respect of which the offence was committed, and goods so seized shall be disposed of as the Minister may either generally or in any particular case order.
- (3) A magistrate's court shall, notwithstanding anything to the contrary in any law contained, be competent to impose any penalty provided for in this Act.

26A. No prosecution under section 26(1)(j) or (k) may be instituted without the written authority of the National Director of Public Prosecutions.

[S. 26A inserted by s. 27 of Act 33/2004]

27. Entering into and ratification of conventions, treaties and agreements

- (1) The State President may, by proclamation in the *Gazette*, add to this Act any Schedule in which the provisions of an international convention, treaty or agreement with regard to non-proliferation entered into or ratified by the Government of the Republic, are included.
- (2) (a) The State President may, by proclamation in the *Gazette*, amend the Schedule -
 - (i) to give effect to any amendment of or addition to a convention, treaty or agreement referred to in subsection (1) which may be made from time to time and which has been ratified by the Government of the Republic;
 - (ii) by the substitution for any convention, treaty or agreement appearing therein of a new convention, treaty or agreement entered into or ratified by the Government of the Republic under subsection (1).
- (b) A proclamation in terms of paragraph (a) may be made with retrospective effect as from the date on which the amendment or addition or the new convention, treaty or agreement was ratified by the Government of the Republic.

- (3) On the date of commencement of a proclamation in terms of subsection (1) or (2), the convention, treaty or agreement or the amendment thereof or the addition thereto, as the case may be, shall have the force of law and apply in the Republic.
- (4) The Minister shall lay a copy of every proclamation issued under subsection (1) or (2) upon the Table in Parliament within 14 days after publication thereof in the *Gazette* if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

28.

[S. 28 repealed by s. 6 of Act 50/95]

29. State bound

This Act binds the State, except in so far as criminal liability is concerned.

30. Short title and commencement

This Act shall be called the Non-Proliferation of Weapons of Mass Destruction Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

SCHEDULE

CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION AND STOCKPILING OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS AND ON THEIR DESTRUCTION (1972)

ENTRY INTO FORCE: 26 MARCH 1975

The States Parties to this Convention,

Determine to act with a view to achieving effective progress toward general and complete disarmament, including the prohibition and the elimination of all types of weapons of mass destruction, and convinced that the prohibition of (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective control,

Recognizing the important significance of the Protocol for the Prohibition of the Use of War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare signed at Geneva on June 17, 1925, and conscious also of the contribution which the said Protocol has already-made and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objections of the Geneva Protocol of June 17, 1925,

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

Desiring also to contribute to the realization of the purposes and principles of the Charter of the United Nations,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemicals or bacteriological (biological) agents,

Recognizing that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

Have agreed as follows:

ARTICLE I
ARTICLE II
ARTICLE III
ARTICLE IV
ARTICLE V
ARTICLE VI
ARTICLE VII
ARTICLE VIII
ARTICLE IX
ARTICLE X
ARTICLE XI
ARTICLE XII
ARTICLE XIII
ARTICLE XIV
ARTICLE XV

ARTICLE I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) 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, protection or other peaceful purposes;
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

ARTICLE II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after the entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

ARTICLE III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxin, weapons, equipment or means of delivery specified in Article I of the Convention.

ARTICLE IV

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

ARTICLE V

The State Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the applications of the provisions of the Convention. Consultation and cooperation pursuant to this article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

ARTICLE VI

- (1) Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.
- (2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the State Parties to the Convention of the results of the investigation.

ARTICLE VII

Each State Party to this Convention undertakes to provide support, assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

ARTICLE VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925.

ARTICLE IX

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this ends, undertakes to continue negotiations in good faith

with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

ARTICLE X

- (1) The State Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.
- (2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of State Parties to the Convention or International cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

ARTICLE XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

ARTICLE XII

Five years after entry into force of this Convention, or earlier if it is requested by a majority of the Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of the State Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

ARTICLE XIII

- (1) This Convention shall be of unlimited duration.

- (2) Each State Party to this Convention shall in exercising its natural sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interest of its country. It shall give notice of such withdrawal to all other State Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events regarded as having jeopardized its supreme interests.

ARTICLE XIV

- (1) This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph 93) of this Article may accede to it at any time.
- (2) This Convention shall be: subject to any ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.
- (3) This Convention shall enter into force after the deposit of instruments of ratification by twenty-one Governments, including designated as Depositories of the Convention.
- (4) For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instrument of ratification or accession.
- (5) The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.
- (6) This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations

ARTICLE XV

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies shall be transmitted by the Depositary Governments of the signatory and acceding States.

[Schedule added by Proclamation R16/2002]