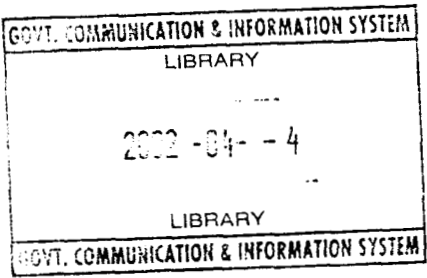


REPUBLIC OF SOUTH AFRICA

**NATIONAL CONVENTIONAL
ARMS CONTROL BILL**

*(As presented by the Portfolio Committee on Defence (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE)



[B 50B—2000]

ISBN 0 621 32100 1

No. of copies printed 1 800

BILL

To establish the National Conventional Arms Control Committee; to ensure compliance with the policy of the Government in respect of arms control; to ensure the implementation of a legitimate, effective and transparent control process; to foster national and international confidence in the control procedures; to provide for an Inspectorate to ensure compliance with the provisions of this Act; to provide for guidelines and criteria to be used when assessing applications for permits made in terms of this Act; to ensure adherence to international treaties and agreements; to ensure proper accountability in the trade and export of conventional arms; to provide for matters connected with the work and conduct of the Committee and its secretariat; and to provide for matters connected therewith.

PREAMBLE

SINCE the adequate protection of rights to life and security of the person against repression and acts of aggression is fundamental to the well-being and to the social and economic development of every country;

AND SINCE it is the duty of every government to protect and safeguard the rights of its people;

AND SINCE every responsible country has the right to acquire arms to equip itself against acts of aggression;

AND SINCE the Republic is a responsible member of the international community and will not export conventional arms to states engaged in repression, aggression or terrorism;

AND SINCE the Republic is engaged in the manufacturing and export of conventional arms;

AND SINCE it is vitally important to ensure accountability in all matters concerning conventional arms and services provided in connection with conventional arms,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—

(i) “brokering services” means—

(a) acting as an agent in negotiating or arranging a contract, purchase, sale or transfer of conventional arms for a commission, advantage or cause, whether financially or otherwise;

(b) acting as an agent in negotiating or arranging a contract for the provision of services for a commission, advantage or cause, whether financially or otherwise;

(c) facilitating the transfer documentation, payment, transportation or freight forwarding, or any combination of the aforementioned, in respect

5

10

- of any transaction relating to buying, selling or transfer of conventional arms; and
- (d) acting as intermediary between any manufacturer or supplier of conventional arms, or provider of services, and any buyer or recipient thereof; 5
- (ii) “Committee” means the National Conventional Arms Control Committee established by section 2;
- (iii) “competent authority” means the Minister, the Chairperson of the Committee or the Committee, or any subcommittee to which, or any member of the Committee, a subcommittee or the secretariat, or any inspector of the Inspectorate, to whom, a power has been delegated or a duty has been assigned in terms of section 11; 10
- (iv) “conventional arms” includes—
- (a) weapons, munitions, explosives, bombs, armaments, vessels, vehicles and aircraft designed or manufactured for use in war, and any other articles of war; 15
- (b) any component, equipment, system, processes and technology of whatever nature capable of being used in the design, development, manufacture, upgrading, refurbishment or maintenance of anything contemplated in paragraph (a); and 20
- (c) dual-use goods, but does not include a weapon of mass destruction as defined in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), or a firearm regulated in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000); 25
- (v) “convey”, in relation to conventional arms, means to transport conventional arms through or over the territory of the Republic, its territorial waters or its airspace to any other place or destination outside the Republic, whether or not such conventional arms are off-loaded, and “conveyance” must be interpreted accordingly; 30
- (vi) “Department” means the Department of Defence;
- (vii) “dual-use goods” means products, technologies, services or other goods which, besides their normal use and application for civilian purposes, can also be used for the furtherance of general military capability, and which are contained in a list published by the Minister by notice in the *Gazette*; 35
- (viii) “end-user certificate” means a certificate contemplated in section 17;
- (ix) “export”, in relation to conventional arms, includes—
- (a) the entering into a commitment by a person in the Republic to supply a foreign government, or an entity approved by a foreign government, outside the Republic with conventional arms, whether or not it is done in exchange for currency or any other commodity or to advance a cause; and 40
- (b) the transfer of conventional arms from the Republic to any place outside the Republic, including cases where such conventional arms are to be returned to the Republic at a later date, whether or not the transfer is in exchange for currency or any other commodity or to advance a cause, and “exportation” must be interpreted accordingly; 45
- (x) “import”, in relation to conventional arms, means to bring conventional arms into any part of the Republic, irrespective of whether it is done in exchange for currency or any other commodity, and “importation” must be interpreted accordingly; 50
- (xi) “Inspectorate” means the Inspectorate established by section 9(1);
- (xii) “manufacture”, in relation to conventional arms, includes the design, development, production and assembly thereof, and “manufacturing” must be interpreted accordingly; 55
- (xiii) “marketing”, in relation to conventional arms, includes the promotion of conventional arms, and any negotiations, offer, tender advertising, shows, exhibitions or giving of information relating to conventional arms, and “market” when used as a verb must be interpreted accordingly;
- (xiv) “Minister” means the Minister of Defence; 60
- (xv) “national security” has the meaning ascribed to it in section 198 of the Constitution;
- (xvi) “permit” means any permit issued in terms of section 14(2);

- (xvii) "prescribe" means prescribe by regulation made under section 27;
- (xviii) "record" includes any book, document, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing, computer printout as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), microfilm, computer program, computer data and other data; 5
- (xix) "re-export", in relation to conventional arms, means to export imported conventional arms, or to cause imported conventional arms to be exported to any place other than that from which they were originally imported, whether or not it is done in exchange for currency or any other commodity, and "re-exportation" must be interpreted accordingly; 10
- (xx) "secretariat" means the secretariat contemplated in section 8;
- (xxi) "Secretary" means the Secretary for Defence appointed in terms of section 7B of the Defence Act, 1957 (Act No. 44 of 1957);
- (xxii) "service" means any service relating to conventional arms of whatever nature or form to any institution of a foreign country, and includes— 15
 - (a) aid;
 - (b) advice;
 - (c) assistance;
 - (d) training;
 - (e) product support; and 20
 - (f) brokering services,
 but excludes contractual after-sales and warranty services performed by virtue of a permit;
- (xxiii) "subcommittee" means any subcommittee established in terms of section 7;
- (xxiv) "technology" includes any technique, expertise or know-how that can be utilised in the design, development, manufacture, upgrading, refurbishment or maintenance of conventional arms; 25
- (xxv) "this Act" includes any regulation made in terms of section 27;
- (xxvi) "trade", in relation to conventional arms, includes any activity relating to the marketing, importation, exportation, conveyance, manufacturing or re-exportation of conventional arms, whether or not it is done in exchange for currency or any other commodity. 30

CHAPTER I

COMMITTEE, SECRETARIAT AND INSPECTORATE

Establishment of National Conventional Arms Control Committee 35

2. A committee to be known as the National Conventional Arms Control Committee is hereby established.

Objects of Committee

3. The objects of the Committee are to—
- (a) implement Government policy regarding conventional arms control and the control of services, in order to establish, apply and ensure a legitimate, effective and transparent conventional arms and service control process in and for the Republic, which— 40
 - (i) conforms to international law and the guiding principles and criteria contained in section 15; 45
 - (ii) is binding on the Republic; and
 - (iii) is applicable to the control and regulation of trade in conventional arms and of the provision of services;
 - (b) protect the economic and national security interests of the Republic by ensuring adequate control of trade in conventional arms and the provision of services, in accordance with the policy referred to in paragraph (a); and 50
 - (c) foster national and international confidence in the Committee's procedures for control over conventional arms and the provision of services.

Functions of Committee

4. (1) The Committee must—
- (a) establish processes and structures necessary for effective conventional arms control and for the regulation of services;
 - (b) establish guidelines, structures and processes necessary for the scrutiny and assessment of an application for the issue of a permit; 5
 - (c) where necessary, liaise with relevant Government agencies regarding the enforcement of this Act;
 - (d) ensure that the conditions under which a permit is issued, are complied with;
 - (e) keep a register in the prescribed form of persons involved in trade in conventional arms and the provision of services; 10
 - (f) keep a register of every permit issued; and
 - (g) issue reports as specified in section 23.
- (2) The Committee may—
- (a) inside or outside the Republic, conduct any investigation into, inspection of and research in connection with— 15
 - (i) any trade relating to conventional arms; and
 - (ii) the provision of any service;
 - (b) consult with the Minister with regard to any aspect that falls within the powers of the Minister in terms of this Act; 20
 - (c) evaluate and comment on conventional arms trade and the provision of services;
 - (d) make recommendations to the Cabinet concerning the provision of services and control processes and structures in respect of conventional arms; and
 - (e) direct any subcommittee to make information which it has in its possession available to the Committee, the Cabinet, Parliament or any committee of Parliament. 25

Composition of Committee

5. (1) (a) The Committee consists of such Ministers and Deputy Ministers as the President may appoint. 30
- (b) The President may appoint such other persons to the Committee as the President deems necessary.
- (2) (a) The President must make the appointment of the members contemplated in subsection (1) known by notice in the *Gazette* and must specify the period for which each member is appointed. 35
- (b) The President may renew the appointment of a member of the Committee when the period for which the member was appointed expires.
- (3) The President must designate one member of the Committee as the chairperson and another as the deputy chairperson, such members being Ministers who do not have a line function interest in conventional arms exports. 40
- (4) A member must vacate office if that member—
- (a) resigns by written notice addressed to the President;
 - (b) is removed from office by the President; or
 - (c) was appointed in terms of subsection (1)(a), and ceases to be a Minister or Deputy Minister. 45
- (5) The resignation of a member of the Committee in terms of subsection (4)(a) only comes into effect after acceptance by the President.
- (6) If a member of the Committee vacates office before the expiry of his or her period of office, the President may appoint a new member for the unexpired portion of that period. 50

Meetings of Committee

6. (1) The chairperson of the Committee must determine the scheduled time and place of Committee meetings and make this known to the other members of the Committee.
- (2) (a) The Committee may determine its own procedure for meetings.
- (b) Four of the members, who must include the chairperson or deputy chairperson of the Committee, constitute a quorum. 55
- (3) The Committee must cause minutes to be kept of its proceedings.

(4) The Committee may refer any matter to be considered by it to the Cabinet for a resolution, which resolution binds the Committee.

(5) A decision of the Committee or an act performed in terms of a decision of the Committee is not invalid merely by reason of a vacancy in the Committee, or by reason of the presence of any person not entitled to sit as a member, at the time when the decision was taken. 5

Subcommittees

7. (1) The Committee may establish one or more subcommittees, which must perform such functions as the Committee may direct.

(2) A subcommittee must consist of one or more members of the Committee designated by the Committee and, if it is deemed necessary, one or more other persons appointed in terms of subsection (3) for such period as may be determined by the Committee. 10

(3) The Minister may, with the concurrence of the Committee, appoint persons who are not in the full-time employment of the State to a subcommittee and may grant those persons such allowances and remuneration as the Minister, with the concurrence of the Minister of Finance, may determine in general or in a specific case. 15

(4) The Committee must designate a chairperson for every subcommittee and, if necessary, a deputy chairperson.

(5) When a subcommittee has performed its functions contemplated in subsection (1), it must submit a written report with recommendations to the Committee for consideration. 20

(6) The Committee may at any time dissolve a subcommittee.

(7) A subcommittee may determine its own procedure for meetings.

(8) The Committee is not absolved from responsibility for the performance of any function assigned to any subcommittee in terms of subsection (1). 25

(9) A decision of a subcommittee or an act performed in terms of a decision of a subcommittee is not invalid merely by reason of a vacancy in the subcommittee, or by reason of the presence of any person not entitled to sit as a member, at the time when the decision was taken. 30

Secretariat

8. (1) (a) The work incidental to the performance of the functions of the Committee or a subcommittee must be performed by a secretariat consisting of administrative personnel.

(b) The members of the secretariat must be designated by the Minister, after consultation with the Secretary, from among the employees of the public service. 35

(2) The Minister may, with the concurrence of the Committee, appoint a person who is not in the full-time employment of the State to the secretariat on such conditions of service and at such remuneration and service benefits as the Minister may determine, with the concurrence of the Minister of Finance. 40

Inspectorate

9. (1) (a) An inspectorate to be known as the National Conventional Arms Control Inspectorate is hereby established.

(b) The Inspectorate is accountable only to the Committee and is separate from the secretariat and the Department. 45

(2) The object of the Inspectorate is to ensure that trade in conventional arms and the provision of services are conducted in compliance with this Act.

(3) (a) The Inspectorate consists of the persons appointed as inspectors by the Committee, after consultation with the Minister.

(b) An inspector must possess the necessary expertise to enable him or her to perform the functions of an inspector efficiently. 50

(4) (a) Every inspector must be issued with a document, signed by the Chairperson of the Committee, confirming that person's appointment as an inspector.

(b) When performing functions as an inspector, the inspector must show the document mentioned in paragraph (a) to any person who requests it. 55

(5) An inspector must be paid such remuneration and allowances as the Minister may determine, after consultation with the Committee and with the approval of the Minister of Finance.

Secondment

10. The Minister may, with the concurrence of the Committee and after consultation with the Department of Public Service and Administration, have members of the public service seconded to the secretariat, any subcommittee or any other structure that may be created under this Act, in terms of any law regulating such secondment. 5

Delegation and assignment

11. (1) (a) The Minister may, with the concurrence of the Committee and subject to such conditions as he or she may impose, delegate any power or assign any duty conferred or imposed upon the Minister by or under this Act to any member of the Committee, a subcommittee or the secretariat or to an inspector of the Inspectorate, except the power— 10

(i) to appoint members to a subcommittee and to grant them allowances and remuneration as contemplated in section 7(3); and 15

(ii) to make regulations as contemplated in section 27.

(b) The Committee may, subject to such conditions as it may determine, delegate or assign to any subcommittee, member of the secretariat or inspector of the Inspectorate any power or duty conferred or imposed upon the Committee by or under this Act. 20

(c) A subcommittee may, subject to such conditions as it may determine, delegate or assign to any member of the secretariat or inspector of the Inspectorate any power or duty conferred or imposed upon that subcommittee by or under this Act.

(2) The Minister, Committee and any subcommittee are not divested of any power or exempted from any duty delegated or assigned by any of them, and may amend or set aside any decision taken by any person in the exercise of a power or performance of a duty so delegated or assigned. 25

Costs and expenses of Committee, and audit

12. (1) The costs and expenses connected with the application of this Act must be defrayed from money appropriated by Parliament to the Department for that purpose. 30

(2) In addition to the audit of the financial statements of the Department in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Auditor-General must audit the registers and processes contemplated in section 4.

CHAPTER II

CONTROL AND INSPECTION

35

Control over conventional arms and provision of service

13. (1) Subject to subsection (2), no person may—

(a) import, export, re-export, convey, manufacture, market or trade in any conventional arms unless that person is registered with the secretariat and in possession of a permit authorising such importation, exportation, re-exportation, conveyance, manufacture, marketing or trading, as the case may be; or 40

(b) in relation to conventional arms, provide a service unless that person is registered with the secretariat and in possession of a permit.

(2) Conventional arms may only be exported to another country with the approval of, and the issuance of an end-user certificate by, the government of that country. 45

Permits

14. (1) Any person who wishes to obtain a permit contemplated in section 13 must apply to the Committee in the prescribed manner.

(2) The Committee may issue a permit subject to such conditions as it may decide upon, or refuse to issue a permit. 50

- (3) The Committee must, by notice in writing to the person who has been issued a permit in terms of subsection (2)—
- (a) cancel or suspend the permit if any condition of the permit has not been or is not being complied with;
 - (b) cancel the permit if the person who has been issued the permit is convicted of an offence in terms of this Act; 5
 - (c) cancel, amend or suspend the permit if it is in the interest of the protection of the security of the Republic; or
 - (d) cancel, amend or suspend the permit if it is in the interest of maintaining and promoting international peace or avoiding repression and terrorism. 10
- (4) A permit issued under subsection (2)—
- (a) must prescribe the quantity, type and value of the conventional arms which may be exported, re-exported, marketed, imported, conveyed, manufactured, traded or brokered thereunder;
 - (b) may prescribe the period within which, the harbour, port or airport through or from which, the person, country or territory from or to which, the route along which and the manner in which the conventional arms in question must be exported, re-exported, marketed, imported, conveyed, manufactured or traded; and 15
 - (c) may prescribe such other conditions as the Committee determines. 20
- (5) An application for a permit for the re-exportation of conventional arms must be accompanied by a notification issued by the government of the country from which such conventional arms were originally imported, indicating that government's consent that such conventional arms may be so re-exported.
- (6) A permit issued under subsection (2) expires— 25
- (a) when the particulars of the holder no longer correspond with that person's particulars as entered in a register contemplated in section 4(1)(f);
 - (b) upon the take-over, de-registration, insolvency or liquidation of the business concern in respect of which the permit was issued; or
 - (c) upon the death of the person to whom the permit was issued. 30
- (7) A permit issued under this section may not be transferred.
- (8) The Committee may not issue a permit for the importation, exportation or marketing of conventional arms to any person convicted of an offence under this Act during the 20 years preceding the application of the permit.

Guiding principles and criteria 35

15. When considering applications contemplated in section 14, the Committee must—

- (a) assess each application on a case-by-case basis;
- (b) safeguard the national security interests of the Republic and those of its allies;
- (c) avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms; 40
- (d) avoid transfers of conventional arms to governments that systematically violate or suppress human rights and fundamental freedoms;
- (e) avoid transfers of conventional arms that are likely to contribute to the escalation of regional military conflicts, endanger peace by introducing destabilising military capabilities into a region or otherwise contribute to regional instability; 45
- (f) adhere to international law, norms and practices and the international obligations and commitments of the Republic, including United Nations arms embargoes; 50
- (g) take account of the resolutions of the Organisation of African Unity Assembly of Heads of State and Government which call for reduced military spending in the interests of development and human security;
- (h) avoid contributing to terrorism and crime;
- (i) avoid the export of conventional arms to a government that has violated an end-user certificate undertaking; 55
- (j) take into account the inherent right of individual and collective self-defence of all sovereign countries in terms of the United Nations Charter; and
- (k) avoid the export of conventional arms that may be used for purposes other than the legitimate defence and security needs of the government of the country of import. 60

Accountability where conventional arms are exported

16. Where conventional arms are exported, and—

- (a) ownership thereof is transferred, the Committee must satisfy itself that the government of the country of import has given an undertaking, reflected in an end-user certificate, that the conventional arms in question will not be transferred, re-sold or re-exported to any other country without the prior approval of the Committee, acting on behalf of the Government of South Africa; 5
- (b) transfer of ownership does not take place, the Committee must—
 - (i) obtain a letter from the government of the country of import stating that the arms in question are intended for demonstration or evaluation purposes and whether they will be returned; or 10
 - (ii) obtain a letter from the applicant stating that the arms in question are being exported for repair or integration only and will be returned; 15
- (c) there is an undertaking that the arms in question are to be returned, the Committee must satisfy itself that the conventional arms have been returned to the Republic in accordance with the undertaking; 15
- (d) the arms in question have been expended during demonstration, the Committee must obtain a certificate from the government of the country of import verifying that fact. 20

End-user certificate

17. Whenever conventional arms are exported, a person authorised by the government of the country to which the arms are exported must issue a certificate—

- (a) setting out the name and address of the declared end-user;
- (b) giving a description of the conventional arms and quantities involved; 25
- (c) undertaking that the conventional arms will not be transferred or re-exported to any other party or country without the authorisation of the South African Government;
- (d) undertaking that proof of importation will be supplied, by way of a Delivery Verification Certificate; 30
- (e) containing the authorisation to issue the certificate in question; and
- (f) containing such other matters as may be prescribed.

Routine inspections

18. An inspector of the Inspectorate may during normal office hours enter any premises other than a private dwelling occupied or used by a person in possession of a permit, in order to determine whether the specifications and conditions of the permit are being complied with. 35

Entry and search of premises with warrant

19. (1) An inspector of the Inspectorate may, on the authority of a warrant issued in terms of subsection (3), enter any premises specified in the warrant, including a private dwelling, and— 40

- (a) inspect, photograph, copy, test and examine any document, record, object or material which he or she suspects might contribute to the investigation authorised by the warrant, or cause it to be inspected, photographed, copied, tested and examined; 45
 - (b) seize any such document, record, object or material if he or she has reason to suspect that it might be useful as evidence in a criminal trial; and
 - (c) examine any activity, operation or process carried out on the premises.
- (2) Upon the request of an inspector acting in terms of a warrant issued in terms of subsection (3), the occupant and any other person present on the premises must— 50
- (a) make available or accessible or deliver to the inspector any document, record, object or material which pertains to the investigation and which is in the possession or under the control of the occupant or other person;
 - (b) furnish such information as he or she has with regard to the matter under investigation; and 55

- (c) render such reasonable assistance as the inspector may require to perform his or her functions efficiently in terms of this Act.
- (3) A warrant contemplated in subsection (1) may be issued by a judge or a magistrate—
 - (a) in relation to premises on or from which there is reason to believe that conventional arms are being developed, manufactured, imported, exported, re-exported or marketed or services are being provided in contravention of this Act; and 5
 - (b) if it appears from information on oath or solemn declaration that there are reasonable grounds to believe that there is evidence available in or upon that premises of a contravention of this Act. 10
- (4) The warrant may impose such restrictions on the powers of the inspector as the judge or magistrate may deem appropriate in the circumstances.
- (5) The inspector executing a warrant in terms of this section must immediately before commencing the inspection, identify himself or herself to the person in control of the premises, if such person is present, and hand to such a person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises. 15

Entry and search of premises without warrant

- 20. An inspector of the Inspectorate may without a warrant exercise any power referred to in section 19(1) if— 20
 - (a) the person who is competent to do so consents; or
 - (b) there are reasonable grounds to believe that a warrant would be issued in terms of section 19(3) and that the delay in obtaining the warrant would defeat the object of the warrant.

Disposal of items seized by inspector 25

- 21. (1) The inspector of the Inspectorate must deliver anything seized in terms of section 19 or 20 without delay to a police official contemplated in section 30 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), who must deal with and dispose of the seized item as provided for in Chapter 2 of that Act.
- (2) When a police official acts in terms of section 30(a) or (b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of an item contemplated in subsection (1), he or she must do so after consultation with the inspector of the Inspectorate. 30

Furnishing of information

- 22. (1) Upon the written request of any competent authority, any person who provides a service in respect of conventional arms or who manufactures, maintains, markets, imports, exports, re-exports, supplies, stores or conveys conventional arms in the course of his or her business, or trades in or otherwise handles or disposes of any conventional arms, or in any other way exercises control over conventional arms, must furnish the competent authority, within a specified period or at specified intervals, with such information at his or her disposal as may be specified in the request. 35 40
- (2) The information referred to in subsection (1) must be accompanied by such data and documents as may be indicated in the request.

Disclosure and non-disclosure of information

- 23. (1) The Committee must— 45
 - (a) ensure compliance with the annual reporting requirements of the United Nations Register of Conventional Arms and present to Parliament a copy of South Africa's annual report to the United Nations;
 - (b) make quarterly reports to the Cabinet and a committee of Parliament determined by Parliament on all conventional arms exports concluded during the preceding quarter; 50
 - (c) at the end of every quarter, provide the Parliamentary committee contemplated in paragraph (b) with a list of all pending applications for permits to enter into a contract to export conventional arms which the Committee is likely to approve, and consider any recommendations by the Parliamentary 55

committee that a permit ought to be denied in a particular application on the grounds that the export would be inconsistent with section 15; and

- (d) at the end of the first quarter of each year, present to Parliament and release to the public an annual report on all conventional arms exports approved during the preceding calendar year.

5

(2) (a) Subject to paragraph (b), the reports referred to in subsection (1)(b), (c) and (d) must contain such information as may be prescribed and must set out the names of the importing states and the type, quantity and value of all the conventional arms in question.

(b) Information concerning the technical specifications of conventional arms may be omitted from a report in order to protect military and commercial secrets.

10

(3) No person may disclose any confidential information concerning the business of the Committee except with the permission of a competent authority or as required in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

CHAPTER III

15

GENERAL

Offences and penalties

24. (1) A person is guilty of an offence if he or she—

- (a) imports, exports, re-exports, conveys, manufactures, markets or trades in conventional arms in contravention of section 13(1)(a);
- (b) provides a service in contravention of section 13(1)(b);
- (c) fails to comply with or contravenes any specification or condition stated in a permit issued to that person;
- (d) furnishes any false information in complying with a request in terms of section 22 or refuses to submit any information required in terms of that section;
- (e) contravenes section 23(3);
- (f) hinders or obstructs any inspector of the Inspectorate in the performance of any function in terms of this Act;
- (g) knowingly makes any false statement regarding a matter regulated in terms of this Act to any competent authority;
- (h) pretends to be an official of a competent authority or a person authorised by such competent authority;
- (i) refuses or fails to comply with any lawful request or order of a competent authority in terms of this Act;
- (j) purports to transfer a permit; or
- (k) fails to disclose an interest as required by section 25.

20

25

30

35

(2) Any person convicted of an offence contemplated in subsection (1) is liable—

- (a) in the case of an offence referred to in subsection (1)(a), (b) and (c), to a fine, or to imprisonment for a period not exceeding 25 years, or to both such fine and imprisonment;
- (b) in the case of an offence referred to in subsection (1)(d) and (e), to a fine, or to imprisonment for a period not exceeding 20 years, or to both such fine and imprisonment;
- (c) in the case of an offence referred to in subsection (1)(f) to (k) to a fine, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

40

45

(3) A court convicting any person of an offence referred to in subsection (1)(a), (b) or (c) may, in addition to any other penalty which it may impose, order seizure of any goods, or any other article, or any material or substance in respect of which the offence was committed, and the goods, article, material or substance so seized must be disposed of as the Secretary either generally or in any particular case may order.

50

Disclosure of interest

25. (1) If any member of the Committee, a subcommittee or the secretariat, or any inspector of the Inspectorate, has a direct or indirect pecuniary or other interest in any matter which could conflict with the proper performance of his or her duties in terms of

55

this Act, he or she must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.

(2) (a) If a member of the Committee or a subcommittee contemplated in subsection (1)—

- (i) is present at a meeting of the Committee or the subcommittee at which a matter contemplated in that subsection is to be considered, the member must disclose the nature of his or her interest to the meeting before the matter is considered; or 5
- (ii) fails to make a disclosure as required by this subsection and is present at a meeting of the Committee or subcommittee, as the case may be, or in any other manner participates in the proceedings, such proceedings in relation to the relevant matter must, as soon as the non-disclosure is discovered, be reviewed and be varied or set aside by the Committee or the subcommittee, as the case may be, without the participation of the member concerned. 10

(b) A member of a Committee or a subcommittee who is obliged to make a disclosure in terms of this section may not be present during any deliberation, or take part in any decision, in relation to the matter in question. 15

(c) Any disclosure made in terms of this section must be noted in the minutes of the relevant meeting of the Committee or subcommittee.

(3) A member of the Committee, a subcommittee or the secretariat, or an inspector of the Inspectorate, who has disclosed a conflict of interest in terms of subsection (1), must be relieved of all duties relating to the matter in question and such duties must be performed by another member of the Committee, subcommittee or secretariat or by another inspector of the Inspectorate, as the case may be, who has no such conflict of interest. 20 25

Extraterritorial application of Act

26. (1) Any court of law in the Republic may try any citizen or permanent resident of the Republic or any juristic person incorporated or registered in the Republic for an offence contemplated in section 24, despite the fact that the act or omission to which the charge relates was committed outside the Republic. 30

(2) Any court of law in the Republic may try a foreign citizen for an offence contemplated in section 24 which is committed within the Republic.

Regulations

27. (1) The Minister may make regulations, with the concurrence of the Committee, regarding— 35

- (a) the procedure to be followed when applying for any permit in terms of this Act and the disclosure of information relating thereto;
- (b) the conditions under which a permit may be issued and the disclosure of information relating thereto;
- (c) matters which must be contained in an end-user certificate; 40
- (d) the keeping of records, minutes, registers and financial statements by any person who is the holder of a permit in terms of this Act;
- (e) the format of reports to be furnished to the Minister, the Committee, the Cabinet or Parliament in terms of this Act;
- (f) the procedure to be followed in connection with requests for reasons for decisions by a competent authority; and 45
- (g) any other matter which it may be necessary or expedient to prescribe in order to achieve the objects of this Act or which may or must be prescribed in terms of this Act.

(2) A regulation may prescribe a penalty of a fine or of imprisonment for a period not exceeding five years, or both a fine and such imprisonment, for any contravention thereof or any failure to comply therewith. 50

(3) Any regulation which is likely to result in state expenditure must be made with the concurrence of the Minister of Finance.

Repeal and savings

55

28. (1) Sections 3(2)(IA), 4C, 4D and 4E of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), are hereby repealed.

- (2) Any permit issued in terms of a law repealed by subsection (1)—
 - (a) must be regarded as having been issued in terms of section 14 of this Act; and
 - (b) remains valid until the expiry of that permit or until it is dealt with in terms of this Act.
- (3) Any application for a permit, which had been submitted before the date of commencement of this Act in terms of a law repealed by subsection (1), must be finalised in terms of that law. 5
- (4) Any notice issued by the Minister in terms of any law repealed by subsection (1), remains in force until repealed or replaced in terms of this Act.

Short title and commencement 10

29. This Act is called the National Conventional Arms Control Act, 2002, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL CONVENTIONAL ARMS CONTROL BILL

1. The South African Government has, since its inauguration in May 1994, committed itself to a policy of non-proliferation, disarmament and arms control, which covers all weapons of mass destruction and extends to concerns relating to the proliferation of conventional weapons. A primary goal of South Africa's non-proliferation, disarmament and arms control policy is to reinforce and promote South Africa as a responsible producer and possessor of and trader in defence-related products and advance technologies.

2. On 30 August 1995 the South African Cabinet approved an Interim Arms Control Policy. This policy forms an integral part of its commitment to democracy, human rights, sustainable development, social justice and environmental protection. The Interim Arms Control Policy was based on the Armaments Development and Production Act, 1968 (Act No. 57 of 1968). In 1997 the National Conventional Arms Control Committee initiated a drafting process for a new Bill.

3. Cabinet then decided that the National Conventional Arms Control Committee should be set up in terms of statute, with clear terms of reference. Therefore the National Conventional Arms Control Bill aims to establish a National Conventional Arms Control Committee (NCACC), which has to ensure compliance with the policy of the Government in respect of arms control. The Bill will enable the NCACC to ensure the implementation of a legitimate, effective and transparent control process, which would foster national and international confidence in the control procedures.

4. CONSULTATION

The Bill was drafted under the auspices of the NCACC whose members made inputs. The Department of Foreign Affairs was also consulted.

5. FINANCIAL IMPLICATIONS FOR STATE

Although no additional expenses are envisaged, any expenses which may crop up will be defrayed from the budget of the Department of Defence.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the NCACC are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.