



Industrial Chemicals (Notification and Assessment) Act 1989

No. 8 of 1990

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SCHEDULE

MATTERS TO BE DEALT WITH IN NOTIFICATION STATEMENT ABOUT CHEMICAL



Industrial Chemicals (Notification and Assessment) Act 1989

No. 8 of 1990

An Act to establish a national system of notification and assessment of industrial chemicals, and for related purposes

[Assented to 17 January 1990]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Chemicals (Notification and Assessment) Act 1989*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day

on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Object of Act

3. The object of this Act is to provide for a national system of notification and assessment of industrial chemicals for the purposes of:

- (a) aiding in the protection of the Australian people and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals; and
- (b) providing information, and making recommendations, about the chemicals to Commonwealth, State and Territory bodies with responsibilities for the regulation of industrial chemicals; and
- (c) giving effect to Australia's obligations under international agreements relating to the regulation of chemicals; and
- (d) collecting statistics in relation to the chemicals;

being a system under which information about the properties and effects of the chemicals is obtained from importers and manufacturers of the chemicals.

Additional operation of Act

4. Without prejudice to its effect apart from this section, this Act also has, because of this section, the effect it would have if the references to the manufacture of industrial chemicals in Australia were, by express provision, confined to the manufacture in Australia of those chemicals:

- (a) by foreign corporations, within the meaning of paragraph 51 (xx) of the Constitution; or
- (b) by trading corporations formed within the limits of the Commonwealth, within the meaning of that paragraph; or
- (c) for supply in the course of trade and commerce with other countries, among the States, within a Territory, between a State and Territory or between 2 Territories; or
- (d) for supply to, or to an authority or instrumentality of, the Commonwealth or a Territory.

Interpretation

5. In this Act, unless the contrary intention appears:

"approved" means approved by the Director;

"approved foreign scheme" means a notification and assessment scheme approved by the Minister under section 43;

"assessment certificate" means a certificate given under section 39;

"assessment information", in relation to an industrial chemical, means information about a matter of which account would be taken in the assessment of the chemical, being a matter specified in paragraph 32 (2) (a), (b), (c), (d), (e) or (f);

“assessment report” means a report under section 31, 57 or 68;

“Australia”, when used in a geographical sense, includes the external Territories;

“basic information”, in relation to a chemical, means all the following information:

- (a) the name or names by which the chemical is known to the public or is intended by its importer or manufacturer to be so known;
- (b) the chemical’s general uses;
- (c) the precautions and restrictions to be observed in the manufacture, handling, storage, use and disposal of the chemical;
- (d) recommendations arising from the assessment of the chemical under this Act that relate to disposing of the chemical and rendering it harmless;
- (e) the procedures to be followed in the event of an emergency involving the chemical;
- (f) prescribed physical and chemical data about the chemical, not being data that would reveal the chemical’s composition;
- (g) prescribed data relating to the health effects or the environmental effects of the chemical;

“biopolymer” means:

- (a) a polymer directly produced by living or once-living cells or cellular components; or
- (b) a synthetic equivalent of a polymer referred to in paragraph (a); or
- (c) a derivative or modification of a polymer referred to in paragraph (a) in which the original polymer remains substantially intact;

“Chairperson” means the Chairperson of the Commission;

“chemical” has the meaning given in section 6;

“Chemical Gazette” means an issue of the *Gazette* published:

- (a) unless the regulations prescribe days for the purposes of this definition—on the first Tuesday in any month; or
- (b) where the regulations prescribe days for those purposes—on any of the prescribed days;

“Chief Executive Officer” means the Chief Executive Officer of the Commission;

“commercial” includes financial;

“Commission” means the National Occupational Health and Safety Commission established by section 6 of the *National Occupational Health and Safety Commission Act 1985*;

“confidential section” means the section of the Inventory referred to in subsection 12 (4);

- “confidentiality request”** means a request made to the Environment Department before the commencement of section 13 that the particulars of a chemical, if it is accepted for inclusion in the Inventory, be kept confidential;
- “Department”** means a Department of the Commonwealth;
- “Director”** means the Director of Chemicals Notification and Assessment appointed under section 90;
- “disposal”**, in relation to a chemical, includes disposal of waste resulting from the manufacture or use of the chemical;
- “environment”** includes all aspects of the surroundings of humans, whether affecting them as individuals or in social groupings;
- “Environment Department”** means the Department of the Arts, Sport, the Environment, Tourism and Territories;
- “environmental effect”**, in relation to an industrial chemical, means the effect on the environment of the importation, manufacture, handling, storage, use or disposal of the chemical;
- “exempt information”** means information about which the Director has given a notification under section 75, and includes information for which an application for treatment as exempt information has been made under this Act but not finalised;
- “full public report”** means a report prepared under section 34 with any variations of it made under subsection 37 (2) or 40 (5);
- “handling”**, in relation to a chemical, includes transporting the chemical;
- “health effect”**, in relation to an industrial chemical, means the effect on occupational health and safety or on public health of the importation, manufacture, handling, storage, use or disposal, of the chemical;
- “holder of a confidence”**, in relation to an industrial chemical, means a person who under section 17 is to be treated as the holder of a confidence about the chemical;
- “import”**, in relation to an industrial chemical, means do an act which constitutes importation of the chemical for the purposes of the *Customs Act 1901*, or would constitute such importation if that Act extended to the external Territories;
- “importer”**, in relation to an industrial chemical, means a person who imports or proposes to import the chemical;
- “incidentally-produced chemical”** means a chemical that is produced as a result of:
- (a) the exposure of another chemical to light, heat or other environmental conditions in the course of handling or storage;
or
 - (b) the occurrence of a chemical reaction during the manufacture or use of another chemical;

but does not include a chemical whose production has commercial value for a person manufacturing, handling, storing or using that other chemical;

“industrial chemical” has the meaning given in section 7;

“information”, in relation to an industrial chemical, includes:

- (a) information about the result of a test relating to the chemical; and
- (b) other information about such a test;

“inspector” means:

- (a) a person appointed as an inspector under subsection 84 (1); or
- (b) an officer of the Public Service of a State or Territory to whom an arrangement referred to in subsection 84 (2) applies;

“Institute” means the National Institute of Occupational Health and Safety referred to in subsection 29 (1) of the *National Occupational Health and Safety Commission Act 1985*;

“introduction”, in relation to an industrial chemical, means the importation, or manufacture in Australia, of the chemical;

“introduction permit” means a permit under section 30;

“Inventory” means the Australian Inventory of Chemical Substances referred to in section 11;

“listed industrial chemical” means an industrial chemical whose particulars are included in the Inventory;

“manufacturer”, in relation to an industrial chemical, means a person who manufactures or proposes to manufacture the chemical in Australia;

“Material Safety Data Sheet”, in relation to a chemical or to a product or substance containing a chemical, means a written statement that:

- (a) identifies the chemical; and
- (b) specifies the health hazards that could be caused by the chemical; and
- (c) specifies the manner of handling the chemical, product or substance in a way that minimises hazards; and
- (d) specifies the procedures to be adopted in the event of any emergency involving the chemical, product or substance; and
- (e) contains information about the chemical and physical properties of the chemical, not being exempt matter or matter referred to in subsection 46 (2); and
- (f) contains prescribed information;

being, if there is a note known as a Guidance Note for Completion of a Material Safety Data Sheet published by the Commission, a statement prepared in accordance with that note;

“monomer” means any non-polymerised chemical that is:

- (a) used in the production of polymers; and

- (b) capable of undergoing an addition reaction or condensation reaction;

“naturally-occurring chemical” means:

- (a) an unprocessed chemical occurring in a natural environment; or
- (b) a chemical occurring in a natural environment, being a substance that is extracted by:
 - (i) manual, mechanical or gravitational means; or
 - (ii) dissolution in water; or
 - (iii) flotation; or
 - (iv) a process of heating for the sole purpose of removing uncombined water;

without chemical change in the substance;

“new industrial chemical” means an industrial chemical that:

- (a) is not a listed industrial chemical; and
- (b) in the case of a synthetic polymer—is a new synthetic polymer;

but does not include an industrial chemical a submission for whose inclusion in the Inventory is being dealt with under section 13;

“new synthetic polymer” means:

- (a) a polymer that includes a combination of monomers and other reactive components, being a combination not listed in the Inventory; or
- (b) a polymer of whose weight at least 2% is attributable to a monomer or other reactive component that is not listed in the Inventory as a component of a synthetic polymer;

“non-confidential section” means the section of the Inventory referred to in subsection 12 (2);

“notification law”, in relation to a State or Territory, means a law of the State or Territory under which a statement of matters about new industrial chemicals manufactured there are given to an authority of the State or Territory;

“notification statement” means a statement referred to in subsection 23 (3);

“occupier”, in relation to a vehicle, vessel or aeroplane, means the person in charge of it;

“officer” means a person who is, or has been:

- (a) the Director; or
- (b) assisting the Director; or
- (c) an inspector;

“polymer” means a chemical comprising a simple weight majority of molecules containing 2 or more monomer units which are covalently bound to at least 2 other monomer units and for which the number-average molecular weight is more than 500;

“premises” includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“priority existing chemical” means an industrial chemical in respect of which a declaration under section 51 or 52 is in force;

“reaction intermediate” means a substance that:

- (a) is produced in the course of a chemical reaction; and
- (b) has a transient existence; and
- (c) does not become a major component of the reaction mixture; and
- (d) is not removed from the reaction system;

“secondary notification” means notification required by section 65;

“Secretary”, in relation to a Department, means the person who is, for the time being, the Secretary of that Department within the meaning of the *Public Service Act 1922*;

“summary report” means a report prepared under section 35 with any variations of it made under subsection 37 (2) or 40 (7);

“synthetic polymer” means any polymer other than a biopolymer;

“Tribunal” means the Administrative Appeals Tribunal;

“use” includes proposed use.

Meaning of chemical

6. (1) In this Act, unless the contrary intention appears:

“chemical” includes:

- (a) a chemical element, including a chemical element contained in a mixture; or
- (b) a compound or complex of a chemical element, including such a compound or complex contained in a mixture; or
- (c) a UVCB substance; or
- (d) a naturally-occurring chemical;

but does not include:

- (e) an article; or
- (f) a radioactive chemical; or
- (g) a mixture.

(2) In this section:

“article” means an object that:

- (a) is manufactured for use for a particular purpose, being a purpose that requires that the object have a particular shape, surface or design; and
- (b) is formed to that shape, surface or design during manufacture; and

(c) undergoes no change of chemical composition when used for that purpose except as an intrinsic aspect of that use;

but does not include a particle or a fluid;

“**mixture**” means a physical combination of chemicals resulting from deliberate mixing of those chemicals or from a chemical reaction, but does not include a UVCB substance;

“**radioactive chemical**” means a chemical having a specific activity greater than 35 becquerels per gram;

“**UVCB substance**” means:

- (a) a chemical of unknown or variable composition; or
- (b) a complex product of a chemical reaction; or
- (c) biological material, other than a whole animal or a whole plant.

Meaning of industrial chemical

7. (1) In this Act, unless the contrary intention appears:

“**industrial chemical**” means a chemical that has an industrial use, whether or not it also has an excluded use.

(2) In this section:

“**agricultural chemical**” means a substance or mixture of substances that is a means of directly or indirectly:

- (a) destroying, stupefying, inhibiting, attracting or repelling a pest in relation to a plant, a place or a thing; or
- (b) destroying a plant; or
- (c) modifying the physiology of a plant so as to alter its natural development, productivity or reproductive capacity; or
- (d) modifying the effect of another agricultural chemical product;

but does not include:

- (e) a veterinary chemical product; or
- (f) a substance or mixture of substances of a kind that is declared by the regulations not to be an agricultural chemical product for the purposes of the *Agricultural and Veterinary Chemicals Act 1988*;

“**excluded use**”, in relation to a chemical, means:

- (a) use as an agricultural chemical or a constituent of an agricultural chemical; or
- (b) use as a veterinary chemical or a constituent of a veterinary chemical; or
- (c) therapeutic use or use as an ingredient or component in the preparation or manufacture of goods for therapeutic use; or
- (d) use as food intended for consumption by humans or animals or a constituent of such food; or
- (e) use as a food additive in food referred to in paragraph (d);

“food additive” means any chemical whose deliberate addition to food is approved by the National Health and Medical Research Council;

“industrial use”, in relation to a chemical, means a use other than an excluded use;

“therapeutic use” means use in, or in connection with:

- (a) preventing, diagnosing, curing or alleviating diseases, ailments, defects or injuries in humans; or
- (b) influencing, inhibiting or modifying physiological processes in humans; or
- (c) testing the susceptibility of humans to diseases or ailments;

and, without limiting this, includes use in, or in connection with, testing for pregnancy, contraception, prosthetics or orthotics;

“veterinary chemical product” means a substance or mixture of substances that is:

- (a) a means of directly or indirectly:
 - (i) preventing, diagnosing, curing or alleviating a disease or condition in an animal or an infestation of an animal by a pest in relation to that animal; or
 - (ii) curing or alleviating an injury suffered by an animal; or
 - (iii) modifying the physiology of an animal:
 - (A) so as to alter its natural development, productivity or reproductive capacity; or
 - (B) so as to make it more manageable; or
- (b) prepared by a pharmacist or veterinary surgeon, in the course of the practice of his or her profession, to deal with a particular condition of a particular animal in a particular instance;

but does not include a substance or mixture of substances of a kind that is declared by the regulations not to be a veterinary chemical product for the purposes of the *Agricultural and Veterinary Chemicals Act 1988*.

Application of Act

8. This Act extends to every external Territory.

Act to bind Crown

9. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

Relationship to other Commonwealth laws etc.

10. The provisions of this Act are in addition to, and not in substitution for, the requirements of any other law of the Commonwealth (whether passed or made before or after the commencement of this Act).

PART 2—AUSTRALIAN INVENTORY OF CHEMICAL SUBSTANCES

Division 1—Keeping of Inventory

Inventory

11. (1) The Director must keep the inventory known as the Australian Inventory of Chemical Substances that was kept by the Environment Department immediately before the commencement of this section.

(2) The Inventory must be kept in the prescribed form at such place as the Director directs, and may be kept by electronic means.

Content of Inventory

12. (1) In this section:

“**accepted chemical**” means a chemical accepted by the Environment Department before the commencement of this section for inclusion in the Inventory;

“**confidential chemical**” means an accepted chemical in relation to which, in response to a confidentiality request, the Environment Department has, before the commencement of this section, decided that the publication of some or all of the chemical’s particulars could reasonably be expected to prejudice substantially the commercial interests of the person making the request.

(2) The Inventory is to consist of a non-confidential section and a confidential section.

(3) The non-confidential section is to contain approved particulars of:

- (a) each accepted chemical that is not a confidential chemical; and
- (b) each chemical included under paragraph 13 (1) (a); and
- (c) each chemical included under paragraph 13 (2) (d); and
- (d) each chemical included under subsection 14 (7); and
- (e) each chemical transferred under section 19.

(4) The confidential section is to contain approved particulars of:

- (a) each confidential chemical; and
- (b) each chemical included under paragraph 13 (2) (c); and
- (c) each chemical included under subsection 14 (4);

other than chemicals transferred under section 19.

(5) The names of naturally occurring chemicals are to be regarded as included in the non-confidential section.

(6) The Inventory is not to contain particulars of a chemical removed from it under section 63 unless those particulars are subsequently required to be included under section 14.

Inclusion of chemicals the subject of submissions not finalised

13. (1) The Environment Department may continue to deal with the submission of an industrial chemical for inclusion in the Inventory made, but not finalised, before the commencement of this section and, where the chemical is accepted for inclusion, the Environment Department must:

- (a) where there is no confidentiality request in respect of the chemical—include the chemical in the non-confidential section; or
- (b) where a confidentiality request was made in respect of the chemical—inform the Director of the acceptance so that he or she can deal with the request under subsection (2).

(2) Where:

- (a) before the commencement of this section, an industrial chemical was submitted to the Environment Department for inclusion in the Inventory; but
- (b) a confidentiality request made in respect of the chemical had not been finalised;

the Director must, as soon as practicable after the commencement of this section, consider the request and:

- (c) where he or she is satisfied that the publication of some or all of the chemical's particulars could reasonably be expected to prejudice substantially the commercial interests of a person who made the confidentiality request—include the chemical in the confidential section; or
- (d) where the Director is not so satisfied—include the chemical in the non-confidential section in accordance with subsection (3);

and must give written notice of the proposed action to the person who made the confidentiality request.

(3) Where the Director decides to include a chemical in the non-confidential section under paragraph (2) (d), he or she must delay doing so for 28 days after giving the notice under subsection (2) or, where the person who made the confidentiality request about the chemical applies during those days to the Tribunal under section 102 for the review of the decision, until the application is finalised.

Inclusion of new industrial chemical in Inventory after 5 years

14. (1) Where:

- (a) an assessment certificate for an industrial chemical is in force; and
- (b) the period of 5 years from the giving of the certificate ends;

the Director must include the chemical in the Inventory, and must give notice in the Chemical Gazette that he or she has done so.

(2) Not less than 28 days before including the chemical in the Inventory, the Director must give each holder of an assessment certificate for the chemical written notice:

- (a) informing them of the proposed inclusion; and
- (b) setting out the terms of subsections (3) and (4).

(3) A holder may apply in the approved form to the Director for the inclusion of the chemical in the confidential section.

(4) Where the Director is satisfied that the publication of some or all of the chemical's particulars could reasonably be expected to prejudice substantially the commercial interests of the applicant, the Director must include the chemical in the confidential section.

(5) The Director must give the applicant written notice of the decision about the application.

(6) Where the Director decides not to include the chemical in the confidential section, he or she must delay including the chemical in the Inventory for 28 days after giving notice or, where the applicant applies during those days to the Tribunal under section 102 for the review of the decision, until the application to the Tribunal is finalised.

(7) Where the chemical is not included in the confidential section, it is to be included in the non-confidential section.

Inventory to be publicly available

15. The Director must ensure that copies of the non-confidential section are available for:

- (a) sale to the public; or
- (b) inspection by the public at the prescribed times, and on payment of the prescribed fee (if any).

Division 2—Confidential Section of Inventory

Confidential section

16. The confidential section is not to be publicly available.

Holder of a confidence

17. (1) The person, because of whose confidentiality request an industrial chemical is in the confidential section, is to be treated as the holder of a confidence about that chemical.

(2) A person who held an assessment certificate for a chemical included in the confidential section under section 14 is to be treated as the holder of a confidence about that chemical.

(3) A person may apply in the approved form to the Director to be treated as the holder of a confidence about an industrial chemical in the confidential section.

(4) Where the Director is satisfied that the publication of some or all of the particulars of a chemical in relation to which an application under subsection (2) has been made could reasonably be expected to prejudice substantially the commercial interests of the applicant, the applicant is to be treated as the holder of a confidence about the chemical.

(5) The Director must give the applicant written notice of the decision about the application.

(6) Where the application is rejected, the applicant is to be treated as the holder of a confidence about the chemical for 28 days after the giving of the notice or, where the applicant applies during those days to the Tribunal under section 102 for the review of the decision, until the application to the Tribunal is finalised.

Effect of inclusion in confidential section

18. (1) Where an industrial chemical is included in the confidential section, an officer must not publish or disclose any of the particulars recorded in that section in relation to that chemical except:

- (a) as permitted under subsection (2); or
- (b) in the course of carrying out duties and functions under this Act; or
- (c) by order of a court; or
- (d) with the consent of the holders of a confidence about the chemical.

(2) Where:

- (a) a person inquires of the Director in writing whether a particular industrial chemical that is not included in the non-confidential section is included in the confidential section; and
- (b) the Director is satisfied that the person intends to introduce the chemical;

the Director may answer the inquiry.

Transfer of industrial chemical from confidential section

19. (1) An industrial chemical in the confidential section must be transferred to the non-confidential section if the Director is satisfied that it should cease to be in the confidential section.

(2) Subject to subsection (8), an industrial chemical included in the confidential section otherwise than under subsection 14 (4) that has not been transferred under subsection (1) must be transferred to the non-confidential section at the end of 3 years after the commencement of section 11.

(3) An industrial chemical included in the confidential section otherwise than under subsection 14 (4) that has not been transferred under subsection (1) or (2) must be transferred to the non-confidential section at the end of 6 years after the commencement of section 11.

(4) Subject to subsection (8), an industrial chemical included in the confidential section under subsection 14 (4) that has not been transferred under subsection (1) must be transferred to the non-confidential section at the end of 3 years after its inclusion.

(5) An industrial chemical included in the confidential section under subsection 14 (4) that has not been transferred under subsection (1) or (4) must be transferred to the non-confidential section at the end of 6 years after its inclusion.

(6) Where the Director proposes to transfer a chemical under subsection (1), (2) or (4), he or she must give the holders of a confidence about the chemical written notice:

- (a) informing them of the proposal; and
- (b) setting out the terms of subsections (7) and (8).

(7) Where a notice is given under subsection (6), a holder of a confidence about the chemical may, within 28 days after the giving of the notice, give the Director a written statement setting out reasons why the chemical should not be transferred.

(8) The Director must reconsider the proposed transfer in the light of any statement received under subsection (7) and must:

- (a) where the Director accepts the reasons—refrain from the transfer and give the holder written notice that the chemical will not be transferred; or
- (b) where the Director rejects the reasons:
 - (i) give that person written notice of the rejection; and
 - (ii) delay the transfer for 28 days after giving the notice, or, where the person applies during those 28 days to the Tribunal under section 102 for the review of the decision to reject, until the application is finalised.

Division 3—Correction of Inventory

Correction of Inventory

20. The Director may amend the Inventory for the purpose of correcting an error (other than an error of the kind described in section 52), and must give notice in the Chemical Gazette of any such amendment.

PART 3—NOTIFICATION AND ASSESSMENT OF INDUSTRIAL CHEMICALS

Division 1—New Industrial Chemicals to be Assessed

Introduction of new industrial chemicals

21. (1) A person must not knowingly or recklessly introduce a new industrial chemical unless the person holds an assessment certificate in force in relation to that chemical.

Penalty: \$30,000.

(2) Subsection (1) does not prohibit the introduction of a new industrial chemical in accordance with:

- (a) an authorisation under section 22; or
- (b) an introduction permit.

(3) Subsection (1) does not prohibit the introduction of:

- (a) a new industrial chemical imported solely for an excluded use within the meaning of section 7; or
- (b) a reaction intermediate; or
- (c) an incidentally-produced chemical; or
- (d) a new industrial chemical introduced by a person:
 - (i) solely for the purpose of research, development or analysis; and
 - (ii) in a quantity of not more than 50 kilograms in any 12 month period; or
- (e) a new industrial chemical that may be introduced under regulations referred to in paragraph 111 (c).

Division 2—Notification Procedures before Assessment

Arranged introductions of new chemical may continue

22. Where:

- (a) before the commencement of section 21, a person had arranged to introduce a quantity of a new industrial chemical; and
- (b) apart from this subsection, the person would be required to suspend the introduction because of the section;

the Director may, by written notice to the person, authorise the introduction within a specified period ending not later than 12 months after the commencement of that section.

Application for assessment certificate

23. (1) A manufacturer or importer of a new industrial chemical may apply for an assessment certificate for the chemical.

(2) The application must be in writing in the approved form and must be given to the Director.

(3) The application must be accompanied by a written notification statement about the chemical.

(4) Subject to subsections (5), (6), (7), (8) and (9), a notification statement about the chemical must contain the matters specified in Parts A, B and C of the Schedule.

(5) Subject to subsection (6), a notification statement about a biopolymer must contain the matters specified in Parts A, B, C and D of the Schedule.

- (6) A notification statement about a biopolymer:
- (a) that is to be introduced by the applicant in a quantity of not more than one tonne in any 12 month period; or
 - (b) that is to be manufactured in Australia by or on behalf of the applicant:
 - (i) solely for the purposes of further manufacture at the site of its manufacture; and
 - (ii) in a quantity of not more than 10 tonnes in any 12 month period;

must contain the matters specified in Parts A, B and D of the Schedule.

(7) Subject to subsection (9), a notification statement about a synthetic polymer having a number-average molecular weight of 1,000 or more must contain the matters specified in Parts A, B and D of the Schedule.

(8) Subject to subsection (9), a notification statement about a synthetic polymer having a number-average molecular weight of less than 1,000 must contain the matters specified in Parts A, B, C and D of the Schedule.

- (9) Subject to subsection (6), a notification statement about:
- (a) a new industrial chemical that is to be introduced by the applicant in a quantity of not more than one tonne in any 12 month period; or
 - (b) a new industrial chemical that is to be manufactured in Australia by the applicant:
 - (i) solely for the purposes of further manufacture at the site of its manufacture; and
 - (ii) in a quantity of not more than 10 tonnes in any 12 month period; or
 - (c) a new industrial chemical that is to be introduced by the applicant:
 - (i) solely for the purpose of research, development or analysis; and
 - (ii) in a quantity of more than 50 kilograms but not more than one tonne in any 12 month period;

must contain the matters specified in Parts A and B of the Schedule.

(10) An application for an assessment certificate for a new industrial chemical must, in addition to the notification statement, be accompanied by a statement of any other assessment information available to the applicant.

(11) A notification statement must be accompanied by a statement that the applicant is entitled to use and give the Director all data in the statement.

(12) Where a notification statement contains information obtained from a test, that test shall be of a kind approved by the Director for the purpose of obtaining such information.

(13) For the purposes of subsection (10), information shall be taken to be available to a person if, having regard to:

- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged failure to give a statement of the information;

the person ought reasonably to have been aware of the information.

Variation of requirements of section 23

24. (1) Where:

- (a) a person wishes to apply under section 23 for an assessment certificate for a new industrial chemical; and
- (b) the chemical is listed in a prescribed international inventory of chemicals; and
- (c) the Director is satisfied that, because of the listing, adequate information is available about particular matters that, but for this subsection, would be required to be included in the notification statement;

the Director may waive the requirement to include those matters in the statement.

(2) A person who wishes to apply under section 23 for an assessment certificate for a new industrial chemical may request the Director in writing to vary the requirements in relation to the notification statement by:

- (a) waiving a requirement to include particular matters in the statement; or
- (b) waiving such a requirement and substituting another requirement.

(3) The Director may vary the requirements in the way requested where he or she is satisfied that:

- (a) the introduction of the chemical is not against the public interest; and
- (b) the chemical can be assessed adequately under this Act:
 - (i) where paragraph (2) (a) applies—without those matters; or
 - (ii) where paragraph (2) (b) applies—if the other requirement is substituted.

(4) The Director must waive the requirement if he or she is satisfied that the particular matters are irrelevant, or unnecessary, for the assessment of the chemical.

Exempt information about new industrial chemical

25. An application for an assessment certificate for a new industrial chemical may include an application that certain information given in the notification statement about the chemical be treated as exempt information under section 75.

Withdrawal of application

26. (1) An applicant for an assessment certificate for a chemical may withdraw the application by written notice given to the Director at any time before the publication of the assessment report about the chemical.

(2) Where the applicant withdraws the application and requests the Director in writing to return to the applicant the application and all documents given to the Director by the applicant in connection with the application, the Director must comply with the request.

(3) Where an officer has information, and has it only because it was given by the applicant in connection with the withdrawn application, the officer must not make a record of, or disclose, any of the information except:

- (a) in the course of carrying out functions and duties under this Act; or
- (b) by order of a court; or
- (c) with the consent of the applicant.

Director may require further information

27. (1) Where:

- (a) an application for an assessment certificate has been made; and
- (b) the notification statement accompanying the application does not contain sufficient information about a matter required under section 23;

the Director may give the applicant written notice requiring the applicant to give more information about the matter to the Director.

(2) Where:

- (a) an application for an assessment certificate for a new industrial chemical has been made; and
- (b) the Director considers that information additional to the matters required under section 23 is necessary for the purpose of assessing the chemical and can be given by the applicant;

the Director may, at any time before the assessment report on the chemical is completed, give the applicant written notice specifying the information and requiring the applicant to give the information to the Director.

(3) A notice under this section must specify a period of not less than 28 days for compliance.

(4) If an applicant satisfies the Director that the applicant cannot give some or all of the information required by a notice under subsection (2), the applicant is, for the purposes of subsection 31 (2), to be taken to have complied with the notice so far as it relates to that information.

Applicants to give further information

28. (1) Where, after an application for an assessment certificate for a new industrial chemical has been made and before the application is finalised, the applicant becomes aware of additional assessment information, the

applicant must give the information to the Director in writing as soon as practicable.

(2) Where an applicant fails to comply with subsection (1), the Director may suspend the consideration of the application until the applicant complies.

(3) For the purposes of subsection (1), a person shall be taken to have become aware of information if, having regard to:

- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged failure to give the information;

the person ought reasonably to have become aware of the information.

Further exempt information

29. The giving of information about a chemical under section 27 or 28 may be accompanied by an application in the approved form that some or all of the information be treated as exempt information under section 75.

Permits allowing introduction before assessment

30. (1) Where:

- (a) a person applies for an assessment certificate for an industrial chemical; and
- (b) the Minister is satisfied that:
 - (i) it is in the public interest that the chemical be imported or manufactured by the applicant without delay; and
 - (ii) the importation or manufacture, or the importation or manufacture subject to conditions under subsection (4), is consistent with the reasonable protection of occupational health and safety, public health and the environment;

the Minister may grant to the applicant a permit authorising the importation or the manufacture, as the case may be, of the chemical before the assessment certificate is given to the applicant.

(2) The Minister is to cause notice of the grant of the permit to be published in the Chemical Gazette as soon as is practicable.

(3) Unless the Minister is satisfied that it is in the public interest to withhold publication of any of the following information, the Chemical Gazette notice must contain:

- (a) the name of the applicant;
- (b) the name or names by which the chemical is known to the public or is intended by its importer or manufacturer to be so known;
- (c) the period for which the permit is to remain in force;
- (d) any prescribed particulars.

(4) Where:

- (a) the applicant requested the Minister to withhold the publication of information; but
- (b) the Minister decides to publish the information;

then the Minister is to:

- (c) give written notice of the decision to the applicant; and
- (d) delay the publication for 28 days after giving the notice or, where the applicant applies during those days to the Tribunal under section 102 for the review of the decision, until the application is finalised.

(5) The permit is subject to such conditions as are specified in the permit.

(6) The Minister is not to specify a condition referred to in subsection (5) unless the condition is reasonably necessary for the protection of occupational health and safety, public health or the environment.

(7) A permit in relation to a chemical ceases to be in force if the application by the holder of the permit for an assessment certificate for the chemical is withdrawn under section 26.

Division 3—Assessment and Report

Assessment of chemical

31. (1) Where:

- (a) an application for an assessment certificate for a new industrial chemical has been made under section 23; and
- (b) the information required by any notice in force under section 27 in relation to the application has been given;

the Director must cause the chemical to be assessed in accordance with section 32 and a report of the assessment to be prepared.

(2) Subject to subsection (3), an assessment is to be made and the assessment report, the full public report and the summary report of it completed within 90 days after the day on which the application was made or, where a notice or notices were given under section 27, within 90 days after the day on which the information required by the notice or notices was given.

(3) The Minister may extend the period for assessment and report in relation to an application by up to 90 days if it is not reasonably practicable for the assessment to be carried out thoroughly, and the report completed, within the period.

(4) Where the Minister extends the period for assessment and report, the Minister is to notify the applicant of the extension immediately.

Nature of assessment

32. (1) Where an assessment of an industrial chemical is being made the officer preparing the report must determine the risk (if any) of adverse health effects, safety effects or adverse environmental effects that could be caused by:

- (a) where it is proposed to import the chemical—the importation; or
- (b) where it is proposed to manufacture the chemical in Australia—the manufacture; or
- (c) the use, storage, handling or disposal;

of the chemical.

(2) For the purpose of making a determination under subsection (1) in relation to an industrial chemical, account is to be taken of each of the following matters:

- (a) the properties of the chemical;
- (b) any use to which the chemical is intended to be, or is reasonably likely to be, put;
- (c) any risk to the health or safety of persons who because of their occupation are engaged, or likely to be engaged, in the manufacture, handling, storage, use or disposal of the chemical;
- (d) any risk to the health or safety of likely consumers handling or using the chemical or any product containing the chemical;
- (e) any risk to the environment arising from the use of the chemical or from the discharge of waste products resulting from the manufacture or use of the chemical;
- (f) the extent to which any risk referred to in this subsection is capable of being reduced by compliance with:
 - (i) appropriate procedures relating to the manufacture, handling, storage, use or disposal of the chemical;
 - (ii) special requirements in the packaging or labelling of the chemical;
 - (iii) procedures relating to the control of, or the discharge into the environment of, the chemical or waste products resulting from the manufacture or use of the chemical;
- (g) any other relevant information available to the Director.

Contents of assessment report

33. An assessment report must include a summary of health, safety and environmental matters considered in the assessment and such recommendations as may reasonably be made in relation to each of the following matters:

- (a) the precautions and restrictions to be observed during the importation, manufacture, handling, storage, use or disposal of the chemical to protect persons exposed to the chemical;

- (b) controls to limit emissions of the chemical into the environment, including permissible concentrations in emissions of the chemical into the air or water from a manufacturing plant or other facility;
- (c) the packaging, labelling, handling or storage of the chemical;
- (d) the measures to be employed in emergencies involving the chemical to minimise hazard to persons and damage to the environment;
- (e) the uses of the chemical;
- (f) the means of disposal of the chemical;
- (g) the circumstances (if any) in which secondary notification of the chemical is required;
- (h) any prescribed matter.

Full public report

34. On completing an assessment report about a chemical, the Director must cause a full public report of the assessment to be prepared consisting of the contents of the assessment report other than exempt information.

Summary report

35. (1) On completing an assessment report of an assessment of a chemical, the Director must cause a summary report of the assessment to be prepared.

- (2) The summary report is to consist of:
 - (a) the name of the applicant for the assessment certificate for the chemical; and
 - (b) the basic information about the chemical; and
 - (c) the address where copies of the full public report of the assessment can be obtained by members of the public; and
 - (d) any other prescribed information.
- (3) The summary report is not to contain any exempt information.

Notice to applicant on completion of report

36. As soon as is reasonably practicable after completion of the assessment report, the full public report and the summary report about a chemical, the Director must give the applicant for the assessment certificate for the chemical:

- (a) a copy of each report; and
- (b) a notice setting out the terms of sections 37 and 38.

Application for variation of assessment report

37. (1) When an assessment report is given under section 36 to the applicant for an assessment certificate, the applicant may apply in the approved form to the Director, within 14 days of the giving of the report, for the variation of the report.

(2) The Director must consider the application for variation within 14 days of receiving it, and:

- (a) where satisfied that the report varied as requested would be correct:
 - (i) vary the report as requested; and
 - (ii) make any consequential variation of the full public report and the summary report based on the assessment report; and
 - (iii) notify the applicant of the variation; or
- (b) where not satisfied that the report varied as requested would be correct—give the applicant written notice of the decision to refuse.

Publication of report

38. (1) Where, after the Director has complied with section 36 in relation to an assessment report about a chemical, the applicant for the assessment certificate for the chemical gives the Director written consent to the publication of the report, the Director must publish the report.

(2) Subject to subsections (3) and (4), the Director must publish an assessment report about a chemical at the end of 28 days after his or her compliance with section 36 in relation to the report.

(3) The Director must not publish an assessment report under subsection (2):

- (a) until he or she has made a decision about any application under section 37 in relation to the report; and
- (b) for 28 days after giving notice of any refusal of such an application; and
- (c) until any application during those days to the Tribunal under section 102 for the review of such a decision has been finalised.

(4) The Director must not publish an assessment report about a chemical after the application for the assessment certificate for the chemical has been withdrawn.

(5) The Director is to publish the assessment report by:

- (a) giving a copy of it to:
 - (i) the Chief Executive Officer; and
 - (ii) the Secretary of the Department responsible for matters arising under the *Environment Protection (Impact of Proposals) Act 1974*; and
 - (iii) the Secretary of the Department responsible for matters arising under the *National Health Act 1953*; and
 - (iv) subject to subsection (6), an appropriate authority for each State and Territory; and
- (b) giving a copy of the full public report about the chemical to each member of the Commission and to such other persons (if any) as the Minister directs; and

- (c) publishing the summary report about the chemical in the Chemical Gazette.

(6) The Director must not give a copy of the assessment report to an authority for a State or Territory unless arrangements are in place under which the authority is not to disclose any exempt information in the report except:

- (a) in the course of carrying out functions and duties under a law of the State or Territory relating to industrial chemicals; or
- (b) by order of a court; or
- (c) with the consent of the person who gave the exempt information.

(7) The Director may publish the full public report and the summary report in such other ways as the Director considers appropriate.

Giving of assessment certificates

39. Within 7 days after paragraph 38 (5) (a) is complied with in relation to an application for an assessment certificate for a chemical, the Director must give the applicant a certificate:

- (a) setting out the name of the applicant; and
- (b) giving particulars of the chemical, not being exempt information; and
- (c) stating that the person has complied with the requirements of this Act regarding the notification of the chemical; and
- (d) stating that the chemical has been assessed under this Act; and
- (e) stating that a summary report of the assessment has been, or is to be, published in the Chemical Gazette and giving the date of publication.

Application for variation of full public report

40. (1) Where a summary report about an industrial chemical has been published under paragraph 38 (5) (c), the applicant for the assessment certificate for the chemical or any other person may, within 28 days after the publication, apply in the approved form to the Director for the variation of the full public report about the chemical.

(2) Where, at the end of the 28 days, the Director has received an application or applications for the variation of the report, he or she must:

- (a) publish in the Chemical Gazette a notice setting out:
 - (i) each proposed variation; and
 - (ii) the terms of subsections (4), (5), (6) and (7); and
- (b) give a copy of the notice to the applicant for the assessment certificate for the chemical; and
- (c) delay varying the report for 28 days after the publication of the notice.

(3) Within 28 days after the publication of the notice, an applicant may give the Director a written statement setting out further matters in support of the application.

(4) Within 28 days after the publication of the notice, a person may give the Director a written statement setting out reasons why a proposed variation should not be made.

(5) The Director must, in considering the application for the variation, have regard to any statement received about it under subsection (3) or (4).

(6) The Director must:

- (a) where satisfied that the report varied as requested would be correct—vary the report as requested; or
- (b) where not satisfied that the report as varied would be correct—refuse the application for variation.

(7) When the Director makes a decision about the variation, he or she must:

- (a) publish a notice of the decision in the Chemical Gazette; and
- (b) give a copy of the notice to:
 - (i) the applicant for the assessment certificate for the chemical; and
 - (ii) each person who made an application for a variation of the report; and
 - (iii) each person who gave a statement under subsection (4); and
- (c) where the decision is to vary the report—delay doing so for 28 days after publishing the notice, or, where a person applies during those days to the Tribunal under section 102 for the review of the decision, until the application for review is finalised.

(8) Where a full public report about a chemical is varied, the Director shall make any consequential variations of the assessment report and the summary report about the chemical.

Division 4—Effect of Other Notification Schemes

Approved State and Territory notification procedures

41. (1) In this section:

“notifiable industrial chemical” means a new industrial chemical manufactured in Australia.

(2) If the Minister is satisfied that:

- (a) a notification law is in force in a State or Territory; and
- (b) the requirements of the notification law as to the statement of matters to be given are not less than those under section 23; and
- (c) arrangements are in place providing that, where an authority of a State or Territory receives a statement of matters about a notifiable

industrial chemical under its notification law, the authority will send a copy of the statement to the Director as soon as practicable; the Minister may, by notice in the Chemical Gazette, declare that the State or Territory has a notification law that is sufficient for the purposes of this Act.

(3) Where:

- (a) a declaration under subsection (2) is in force in relation to a State or Territory; and
- (b) a manufacturer of a notifiable industrial chemical has given a statement of matters about the chemical to the appropriate authority of the State or Territory for the purposes of the notification law of that State or Territory; and
- (c) the authority gives to the Director a copy of the written statement, and certifies to the Director that the statement satisfies the requirements of the notification law of the State or Territory in relation to that chemical; and
- (d) the manufacturer applies for an assessment certificate for the chemical;

the statement is to be taken to be the notification statement.

(4) If, at any time after making a declaration under subsection (1), the Minister ceases to be satisfied of the matters referred to in that subsection in relation to the relevant State or Territory, the Minister is to revoke the declaration by notice in the Chemical Gazette.

Exempt information given under section 41

42. A manufacturer of a new industrial chemical about which a statement of matters has been given to the Director under subsection 41 (3), may, before the assessment of the chemical under this Act has begun, make an application in the approved form that some of the information in the statement be treated as exempt information under section 75.

Approved foreign scheme

43. (1) In this section:

“foreign scheme” means a chemicals notification and assessment scheme operating in a foreign country.

(2) The Minister may, by notice published in the Chemical Gazette, approve a specified foreign scheme for the purposes of this Act.

(3) An importer or a manufacturer of a new industrial chemical may, by notice to the Minister in the approved form, nominate a foreign scheme for approval by the Minister.

(4) The Minister may approve a foreign scheme in relation to all industrial chemicals or in relation to industrial chemicals specified in the notice of approval.

(5) The Minister is not to approve a foreign scheme in relation to a chemical unless satisfied that notifications and assessments under it relating to the chemical are of a standard equivalent to, or higher than, those under this Act.

(6) If, at any time after approving a scheme under subsection (1), the Minister ceases to be satisfied of the matters referred to in subsection (5), the Minister is to revoke the approval by notice in the Chemical Gazette.

Chemical notified and assessed under approved foreign scheme

44. (1) Where a person who wishes to make an application for an assessment certificate for a new industrial chemical that has been notified and assessed under an approved foreign scheme gives to the Director:

- (a) a copy of all the particulars about the chemical that were given under the scheme and are available to the person; and
- (b) a copy of the most comprehensive report of the assessment of the chemical under the scheme; and
- (c) any other information about the chemical available to the applicant that is assessment information or was given under another approved foreign scheme; and
- (d) documents that satisfy the Director that, in comparison with the chemical as assessed under the scheme:
 - (i) the proposed use of the chemical in Australia is not significantly different; and
 - (ii) the amount of the chemical to be introduced is not significantly greater; and
 - (iii) no variation is proposed in the method of manufacture that could increase the risk of adverse health effects or adverse environmental effects;

then, subject to subsection (2), the Director is to be taken to have received from the person an application for an assessment certificate for the chemical in accordance with section 23 and the documents given under paragraph (b) are to be taken to be the notification statement.

(2) Where the Director is taken to have received an application because of subsection (1), the Director:

- (a) is not to require further information to be given under section 27 in relation to the application, other than information relating to matters referred to in paragraph (1) (d) or information to clarify information given; and
- (b) must adopt the report made under the scheme unless he or she considers it inappropriate to do so because of information, or the limited extent of the information, made available under paragraph (1) (a), (b) or (c) or section 27.

(3) Where a report is adopted, the Director is to be taken to have carried out his or her duties and functions under sections 31 and 32 and the assessment report may be prepared on the basis of the adopted report.

(4) Subject to subsection (5), the assessment report, the full public report and the summary report are to be completed within 90 days after the day on which the application was made or, where a notice or notices were given under section 27, within 90 days after the day on which the information required by the notice or notices was given.

(5) The Minister may extend the period for the completion of reports by up to 90 days if it is not reasonably practicable for the reports to be completed within the period.

(6) Where the Minister extends the period for the completion of reports, the Minister is to notify the applicant of the extension immediately.

Exempt information given under section 44

45. A person who has given particulars about a new industrial chemical to the Director under paragraph 44 (1) (a) or (c) may, before the assessment report of the chemical is prepared under subsection 44 (3), make an application in the approved form that some of the particulars referred to in that paragraph be treated as exempt information under section 75.

Interim Notification Scheme

46. (1) Where:

- (a) before the commencement of this section, an importer or manufacturer of a new industrial chemical had notified the chemical under the scheme known as the Interim Notification Scheme; and
- (b) the chemical has been assessed under that scheme, whether before or after the commencement of this section;

then:

- (c) for the purposes of section 39:
 - (i) the applicant is to be taken to have complied with the requirements of this Act regarding the notification of the chemical; and
 - (ii) the chemical is to be taken to have been assessed under this section; and
- (d) the Director must give the applicant an assessment certificate for the chemical.

(2) The assessment certificate is not to contain any matter that was given in confidence for the purposes of the notification and assessment.

(3) Where a person who notified a chemical under the scheme introduces the chemical before receiving the assessment certificate for it, the person is not guilty of an offence under subsection 21 (1) because of the introduction.

Division 5—Assessment of Listed Industrial Chemicals and Certain New Industrial Chemicals

Application of Division

47. This Division does not apply in relation to new industrial chemicals other than those referred to in paragraph 21 (3) (c), (d) or (e).

Recommendation of declaration of priority existing chemical

48. Where the Director has reasonable grounds for believing that the manufacture, handling, storage, use or disposal of an industrial chemical gives, or may give, rise to a risk of adverse health effects or adverse environmental effects, the Director may recommend to the Minister that the chemical be declared a priority existing chemical.

Steps before making recommendation

49. (1) For the purposes of deciding whether to make a recommendation under section 48 in relation to a particular industrial chemical the Director may give notice in the Chemical Gazette that he or she is considering making the recommendation.

(2) The notice must be expressed to be directed to:

- (a) all persons who introduce the chemical during the period beginning 12 months before the date of the notice and ending 12 months after that date; or
- (b) all persons who introduce the chemical during that period in specified circumstances; or
- (c) specified persons who introduce the chemical during that period.

(3) The notice may be expressed to be directed to a person whom the Director considers could have information relevant to the Director's decision.

(4) The notice must require each person to whom it is directed (in this section called "**the notifier**") to provide information about the chemical, being information available to the notifier and relevant to the recommendation.

(5) The notice must specify a period of not less than 14 days for compliance with it.

(6) The Director must cause a copy of the notice to be sent to each person who is, to the Director's knowledge, a notifier and whose address is known to the Director.

(7) A notifier must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: \$6,000.

Exempt information supplied under section 49

50. The giving of information about a chemical in compliance with a notice under section 49 may be accompanied by an application in the approved form that some or all of the information about the chemical be treated as exempt information under section 75.

Recommended declaration of priority existing chemicals

51. (1) Where the Director makes a recommendation under section 48 about a chemical, the Minister may, by notice in the Chemical Gazette, declare that chemical to be a priority existing chemical.

(2) A declaration under subsection (1) may be expressed to apply in relation to a chemical, either generally or only when the chemical is:

- (a) used for a specified purpose or purposes; or
- (b) manufactured, handled, stored or used in a specified geographical area or in specified circumstances.

Declaration of chemicals wrongly included in Inventory

52. Where the Director is satisfied that a listed industrial chemical was wrongly accepted for inclusion in the Inventory, the Director must notify the Minister, and the Minister is, by notice in the Chemical Gazette, to declare the chemical to be a priority existing chemical.

Notices of priority existing chemical to indicate extent of assessment

53. A notice under section 51 or 52 declaring a priority existing chemical shall identify information that is likely to be required under section 58 if the chemical is assessed under section 57.

List of priority existing chemicals

54. (1) The Director must maintain a list of priority existing chemicals.

(2) The Director must maintain a list of chemicals that have been priority existing chemicals.

(3) The Director must publish the lists in the Chemical Gazette at least once a year.

Applications for assessment of priority existing chemicals

55. (1) Where a chemical becomes a priority existing chemical, a person may, within 28 days after the day on which it did so, apply in writing in the prescribed form for the assessment of the chemical.

(2) Where the chemical has been a priority existing chemical for longer than 28 days, a person may make a late application in writing in the prescribed form for the assessment of the chemical.

Introduction of priority existing chemicals

56. A person must not knowingly or recklessly introduce a priority existing chemical unless the person has applied under section 55 for the assessment of the chemical.

Penalty: \$12,000.

Assessment of priority existing chemical

57. (1) Where the Director receives an application or applications for the assessment of a priority existing chemical, he or she must cause the chemical to be assessed in accordance with section 32 and a report of the assessment to be prepared.

(2) Where the Director does not, within 28 days after the day on which a chemical became a priority existing chemical, receive an application for the assessment of the chemical, the Director may, at any time within the 12 months beginning on that day, cause the assessment of the chemical in accordance with section 32 to be commenced and a report of the assessment to be prepared.

(3) A priority existing chemical may be assessed by taking into account only such of the matters referred to in subsection 32 (2) as the Director considers to be of particular significance in relation to that chemical.

(4) Sections 33 to 40 (inclusive) apply in relation to an assessment of, and report on, a chemical required by this section but do so as if:

- (a)** references in them to the applicant for the assessment certificate for the chemical were references to each person who complied with the notice under section 58 in relation to the assessment; and
- (b)** references in them to the withdrawal of the application for the assessment certificate were omitted; and
- (c)** where subsection (3) applies—the matters specified in section 33 were limited to those relevant to the assessment.

(5) Subject to subsection (6), an assessment is to be made and the report of it completed within 6 months after the day on which the last information required for the assessment is received.

(6) The Minister may extend the period for assessment and report by up to 6 months if it is not reasonably practicable for the assessment to be carried out thoroughly, and the report completed, within the period.

(7) Where the Minister extends the period for assessment and report, the Minister is to notify each applicant for the assessment of the extension immediately.

Obtaining information for assessment

58. (1) For the purposes of assessing a priority existing chemical, the Director may, by notice in the Chemical Gazette, require a person (in this section called “the notifier”) to whom the notice applies under subsection

(2) to provide information about the chemical in accordance with this section.

(2) The notice may be expressed to apply to:

- (a) all persons who introduce the chemical during the period beginning 12 months before the date of the notice and ending 12 months after that date; or
- (b) all persons who introduce the chemical during that period in circumstances specified in the notice; or
- (c) specified persons who introduce the chemical during that period; or
- (d) specified persons who the Director considers have relevant information.

(3) The notice may require all or any of the following information about the chemical to be given to the Director in writing:

- (a) the properties of the chemical and the tests or other ways by which those properties were determined;
- (b) the quantities of the chemical that have been, or are proposed to be, imported by the notifier;
- (c) the quantities of the chemical that have been, or are proposed to be, manufactured by the notifier;
- (d) the uses or potential uses of the chemical that are known to the notifier;
- (e) a description (whether by name or otherwise) of persons to whom the notifier has supplied or intends to supply the chemical;
- (f) the methods used, or proposed to be used, by the notifier to carry out any of the following activities in relation to the chemical:
 - (i) manufacturing;
 - (ii) handling;
 - (iii) storing;of the chemical;
- (g) any other matter specified by the Director that is relevant to the assessment of the chemical.

(4) The notice must specify a period of not less than 28 days for compliance.

(5) The Director may:

- (a) waive the requirement of a person to give particular information; or
- (b) extend the period within which a person is to comply with the notice.

(6) The Director must cause a copy of the notice and, if that notice has identified the information to be supplied under it by reference to a notice under section 51 or 52, that other notice, to be sent to each person who is,

to the Director's knowledge, a notifier and whose address is known to the Director.

(7) This section does not prevent the Director seeking information about a priority existing chemical for the purpose of assessing the chemical, being information that is additional to that provided under this section.

(8) A notifier must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: \$6,000.

Time for compliance with varied notice

59. A notice that varies a notice under section 58 must extend the period for compliance specified in the varied notice by not less than 28 days.

Exempt information about priority existing chemical

60. The giving of information about a chemical in compliance with a notice under section 58 may be accompanied by an application in the approved form that some or all of the information about the chemical be treated as exempt information under section 75.

Prohibition of priority existing chemical until assessment complete

61. (1) In this section:

“activity”, in relation to a priority existing chemical, means any of the following:

- (a) the importation of the chemical;
- (b) the manufacture of the chemical;
- (c) the manufacture of the chemical in particular circumstances;
- (d) the use of the chemical;
- (e) the use of the chemical for a particular purpose;
- (f) the use of the chemical in particular circumstances;
- (g) the handling of the chemical in particular circumstances;
- (h) the storage of the chemical in particular circumstances;

“particular circumstances” includes a particular geographical area.

(2) Where the Minister has reasonable grounds for believing that an activity involving a priority existing chemical gives rise to an unacceptable risk of adverse health effects or adverse environmental effects, then, as soon as practicable, the Minister is, by notice in the Chemical Gazette, to prohibit that activity while the chemical remains a priority existing chemical.

(3) The Minister is to cause a copy of the notice to be sent to each person who is, to the Minister's knowledge, an importer or manufacturer of the chemical.

(4) An importer or manufacturer of industrial chemicals must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: \$30,000.

(5) A person, other than an importer or manufacturer of industrial chemicals, must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: \$24,000.

Publication of report revokes declaration

62. The publication under paragraph 38 (5) (c) of a summary report about a priority existing chemical revokes the declaration of the chemical under subsection 51 (1) or section 52.

Removal of priority existing chemical from Inventory

63. Where:

- (a) a chemical has been a priority existing chemical for at least 12 months; and
- (b) an application for the assessment of the chemical has not been received; and
- (c) the Director has not caused the chemical to be assessed under subsection 57 (2);

the Director must remove the particulars of the chemical from the Inventory.

Division 6—Secondary Notification after Assessment

Introducer to notify Director of certain matters

64. (1) Where:

- (a) an assessment report about an industrial chemical recommends the secondary notification of the chemical in particular circumstances; and
- (b) the circumstances occur in relation to the introduction of the chemical by a person;

the person must, within 28 days of the occurrence, notify the Director in writing that the circumstances have occurred.

Penalty: \$12,000.

(2) Where a person who introduces an industrial chemical that has been assessed under this Act becomes aware of any of the following circumstances, namely, that since the assessment:

- (a) the function or use of the chemical has changed, or is likely to change, significantly;
- (b) the amount of the chemical being introduced has increased, or is likely to increase, significantly;
- (c) in the case of a chemical not manufactured, or proposed to be manufactured, in Australia at the time of the assessment—it has begun to be manufactured in Australia;
- (d) the method of manufacture of the chemical in Australia has changed, or is likely to change, in a way that may result in an increased risk of adverse health effects or adverse environmental effects;

(e) additional information has become available to the person as to the adverse health effects or adverse environmental effects of the chemical;

(f) a prescribed event has happened;

the person must, within 28 days of becoming aware, notify the Director in writing of the circumstances of which the person has become aware.

Penalty: \$12,000.

(3) For the purposes of subsection (2), a person is to be taken to have become aware of circumstances if, having regard to:

(a) the person's abilities, experience, qualifications and other attributes; and

(b) the nature of the circumstances;

the person ought reasonably to have become aware of the circumstances.

Secondary notification

65. (1) Where a person notifies the Director under subsection 64 (1) of circumstances in relation to an industrial chemical, the Director must, by notice in the Chemical Gazette, require the secondary notification of the chemical by persons to whom the notice applies.

(2) Where, in relation to an industrial chemical assessed under this Act, the Director becomes aware, because of notification under subsection 64 (2) or otherwise, that, since the assessment, any of the circumstances referred to in that subsection occurred, the Director may, by notice in the Chemical Gazette, require the secondary notification of the chemical by persons to whom the notice applies.

(3) The notice requiring secondary notification may be expressed to apply to all persons, or specified persons, who introduce the chemical.

(4) The notice must specify the information about the chemical that is to be given by way of secondary notification, being information about a matter relating to the circumstances because of which the notification is required.

(5) The notice must specify a period of not less than 28 days for compliance.

(6) The Director must cause a copy of the notice to be sent to each person who is, to the Director's knowledge, a person to whom the notice applies and whose address is known to the Director.

Exempt information about chemicals subject to secondary notification

66. The giving of secondary notification about a chemical may be accompanied by an application in the approved form that some or all of the information given in the notification be treated as exempt information under section 75.

Failure to comply with secondary notification requirements

67. (1) Where a person who is required to give secondary notification of a chemical does not do so, the Minister may, by written notice sent to that person:

- (a) in the case of a new industrial chemical—suspend any assessment certificate or introduction permit held by the person for that chemical; or
- (b) in any other case—prohibit the importation and manufacture of the chemical by that person.

(2) A person must not knowingly or recklessly introduce a chemical in contravention of paragraph (1) (b).

Penalty: \$12,000.

(3) Where, after the Minister has given a notice under subsection (1) to a person, the person complies with the requirements for secondary notification, the Minister is to revoke the notice as soon as is reasonably practicable.

Assessment of chemical of which secondary notification required

68. (1) Where secondary notification of a chemical has been given, the Director must cause the chemical to be assessed in accordance with section 32 and a report of the assessment to be prepared.

(2) Where the secondary notification of a chemical is required but is not given by any person, the Director may cause the chemical to be assessed in accordance with section 32 and a report of the assessment to be prepared.

(3) A chemical of which secondary notification is required may be assessed by taking into account only such of the matters specified in subsection 32 (2) as the Director considers to be of particular significance in relation to that chemical.

(4) Sections 33 to 38 (inclusive) and 40 apply in relation to an assessment of, and report on, a chemical required by this section but do so as if:

- (a) references in them to the applicant for the assessment certificate for the chemical were references to each person who gave secondary notification of the chemical; and
- (b) references in them to the withdrawal of the application for the assessment certificate were omitted; and
- (c) where subsection (3) applies—the matters specified in section 33 were limited to those that are relevant to the assessment.

(5) Subject to subsection (6), an assessment is to be made and the assessment report, the full public report and the summary report of it completed within 90 days after the day on which the last information required for the assessment is received.

(6) The Minister may extend the period for assessment and report by up to 90 days if it is not reasonably practicable for the assessment to be carried out thoroughly, and the report completed, within the period.

(7) Where the Minister extends the period for assessment and report, the Minister is to notify the applicant of the extension immediately.

Obtaining information for purposes of assessment

69. (1) Where a chemical is being assessed because of section 68, the Director may, by notice in the Chemical Gazette, require all persons, or specified persons, who introduce the chemical but who are not required to give secondary notification of the chemical to provide to the Director in writing the information about the chemical that is specified in the notice, being particulars about a matter relating to the circumstances because of which the notification is required.

(2) The notice must specify a period of not less than 14 days for compliance.

(3) The Director must cause a copy of the notice to be sent to each person who is, to the Director's knowledge, a person to whom the notice applies and whose address is known to the Director.

(4) A person to whom a notice applies must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: \$6,000.

Variation of assessment certificate on secondary notification

70. (1) Where:

- (a) an assessment certificate for a chemical is in force; and
- (b) a summary report about the chemical is published because the secondary notification of the chemical was required;

the Director must endorse on the certificate a statement that such a report has been published giving the date of publication.

(2) The holder of the certificate must make it available to the Director for the purposes of the endorsement.

List of chemicals requiring secondary notification

71. (1) The Director must maintain a list of chemicals requiring secondary notification.

(2) The Director must maintain a list of chemicals that required, but no longer require, secondary notification.

(3) The Director must publish the lists in the Chemical Gazette at least once a year.

Revocation of requirement for secondary notification

72. The Director may, by notice in the Chemical Gazette, declare that a chemical is no longer a chemical whose secondary notification is required.

Division 7—Assessment Certificates

Transfer of assessment certificates

73. (1) Where the holder of an assessment certificate dies, the legal personal representative of his or her estate becomes the holder of that certificate for the purposes of this Act.

(2) Where the holder of an assessment certificate becomes bankrupt, the person who becomes, under the *Bankruptcy Act 1966*, the trustee in bankruptcy of the estate of the bankrupt becomes the holder of the certificate for the purposes of this Act.

(3) Where a body corporate that is the holder of an assessment certificate is being wound up, the person appointed to be the liquidator of the body corporate becomes the holder of the certificate for the purposes of this Act.

(4) Where:

- (a) the holder of an assessment certificate disposes of the business to which the certificate relates; and
- (b) it is a term of the agreement for the disposal of the business that the person who acquires the business becomes the holder of the certificate;

the person who acquires the business becomes the holder of the certificate for the purposes of this Act.

(5) Where, under this section, a person becomes the holder of an assessment certificate, the person must, as soon as practicable, give the Director notice in writing of becoming the holder specifying the circumstances because of which the person became the holder.

(6) If, at any time, the Director becomes satisfied that a person has not complied with subsection (5) in relation to an assessment certificate, the Director may revoke the certificate.

Record of assessment certificates

74. (1) The Director must maintain a list of industrial chemicals in respect of which an assessment certificate is in force.

(2) At least once a year, the Director must publish in the *Chemical Gazette* the additions to, and deletions from, the list that have not been published before.

Division 8—Confidentiality

Exempt information

75. (1) Where, on an application under section 25, 29, 42, 45, 50, 60, 66 or 89, the Director is satisfied that:

- (a) publication of the information specified in the application could reasonably be expected to prejudice substantially the commercial interests of the applicant; and

- (b) the prejudice outweighs the public interest in the publication of the information;

the information is to be treated as exempt information for the purposes of this Act.

(2) The Director must not grant an application under subsection (1) in relation to basic information about a chemical.

(3) The Director must give the applicant written notice of the decision about the application.

(4) Where the application is rejected, the application is not to be taken to have been finalised under this section for the purposes of the definition of "exempt information" in section 5 for 28 days after the giving of the notice or, where the applicant applies during those days to the Tribunal under section 102 for the review of the decision, until the application to the Tribunal is finalised.

Confidentiality by Director etc.

76. Subject to section 79, an officer who has exempt information, and has it only because of performing functions or duties under this Act, must not make a record of, or disclose, any of the information except:

- (a) in the course of carrying out functions and duties under this Act; or
- (b) by order of a court; or
- (c) with the consent of the person because of whose application the information is exempt information.

Division 9—Access to Assessment Information

Notification of introduction

77. Within 7 days after the day on which a person first introduces a chemical after receiving an assessment certificate for the chemical, the person must give written notice of the introduction to the Director.

Full public report etc. to be available

78. (1) Where a chemical about which a summary report has been published has been introduced, the Director must ensure that copies of the full public report about the chemical are available for inspection by the public at the prescribed times and on payment of the prescribed fee (if any).

(2) Where a chemical for which an assessment certificate has been given under section 46 has been introduced, the Director must ensure that copies of the Material Safety Data Sheet (if any) for the chemical current on the giving of the certificate are available for inspection by the public at the prescribed times and on payment of the prescribed fee (if any).

Disclosure of exempt information in certain circumstances

79. The Director must disclose exempt information about a chemical to an inquirer if:

- (a) the Director:
 - (i) is satisfied that the inquiry is to get information for the protection of occupational health and safety, public health or the environment; and
 - (ii) is satisfied that the public interest in disclosure outweighs any commercial interest of the person because of whose application the information is exempt information; and
 - (iii) has consulted that person; and
 - (iv) in the case of information given under a notification law—has consulted the authority to whom the information was given; and
 - (v) in the case of information given under an approved foreign scheme—has consulted the government of the foreign country to whom the information was given; or
- (b) the Director:
 - (i) is satisfied of the matters referred to in subparagraphs (a) (i) and (ii); and
 - (ii) is satisfied that delaying the disclosure to hold the consultations referred to in subparagraphs (a) (iii), (iv) and (v) could result in danger to a person's health or safety or to the environment.

Notice of disclosure of information

80. (1) Where:

- (a) the Director decides to disclose information under paragraph 79 (a); and
- (b) a person, authority or government consulted under subparagraph 79 (a) (iii), (iv) or (v) did not consent to the disclosure;

the Director must:

- (c) give that person, authority or government written notice of the decision; and
- (d) delay disclosing the information for 28 days after giving the notice, or, where the person applies during those days to the Tribunal under section 102 for the review of the decision, until the application is finalised.

(2) Where the Director discloses information under paragraph 79 (b), he or she must, as soon as practicable, give written notice of the disclosure to the person, and to any authority or government, who or that would have been consulted if paragraph 79 (a) had applied.

PART 4—ENFORCEMENT

Division 1—Offences and Injunctions

False or misleading information

81. A person must not make a statement, or give information, whether orally or in writing, in response to any requirement of this Act, if the person knows that the statement or information is false or misleading in a material particular.

Penalty: \$3,000.

Knowledge of chemical to which charge relates

82. For the purposes of this Act, a person is to be taken to have known that a chemical in respect of whose introduction the person has been charged with an offence was, at the time of the introduction, a chemical of the kind to which the charge relates if, having regard to:

- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged offence;

the person ought reasonably to have known, at the time of the introduction, that the chemical was a chemical of that kind.

Injunctions

83. (1) Where a person has engaged, or is proposing to engage, in any conduct that constituted or would constitute an offence against:

- (a) this Act or the regulations; or
- (b) section 6, 7 or 7A of the *Crimes Act 1914* in relation to an offence against this Act or the regulations; or
- (c) an offence against subsection 86 (1) of the *Crimes Act 1914* because of paragraph (a) of that subsection, being an offence in relation to an offence against this Act or the regulations;

the Federal Court may, on the application of the Minister or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not the conduct constitutes a serious and immediate risk of adverse health effects or adverse environmental effects.

(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is a serious and immediate risk of adverse health effects or adverse environmental effects if the person refuses or fails to do that act or thing.

Division 2—Inspectors

Appointment of inspectors

84. (1) The Director may, in writing, appoint a person appointed or employed under the *Public Service Act 1922* to be an inspector.

(2) Arrangements may be made under section 78 of the *Public Service Act 1922* for officers of the Public Service of a State or Territory to exercise the powers and perform the functions of inspectors.

Identity cards

85. (1) The Director must give an inspector an identity card in a form approved by the Director, being a card having a recent photograph of the inspector on it.

(2) Where a person in possession of an identity card given to the person ceases to be an inspector, the person must return the identity card to the Director as soon as practicable.

Penalty: \$100.

Searches to monitor compliance with Act etc.

86. (1) An inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act or the regulations have been complied with, enter any premises with the consent of their occupier, being premises that the inspector has reasonable cause to believe are premises to which this section applies, and:

- (a) search the premises; or
- (b) take photographs, or make sketches, of the premises or any substance or thing at the premises; or
- (c) take and keep samples of any substance at the premises; or
- (d) inspect any record or document kept at the premises; or
- (e) remove, or make copies of, any such record or document.

(2) An inspector may apply to a magistrate for a warrant under this section in relation to premises to which this section applies.

(3) The magistrate may issue the warrant if he or she is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the premises for the purpose of finding out whether there is compliance with the requirements of this Act or the regulations.

(4) A warrant is to:

- (a) state the name of the inspector; and
- (b) authorise him or her, with such assistance and by such force as is necessary and reasonable, to enter the premises and to exercise the powers set out in subsection (1); and
- (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (d) state a day, not being more than 6 months after the issue of the warrant, on which the warrant ceases to have effect.

(5) This section applies to premises at which there are reasonable grounds for suspecting that:

- (a) an industrial chemical is being manufactured; or
- (b) an industrial chemical, whether imported into Australia or manufactured in Australia, is being stored, processed or used; or
- (c) records relating to the importation, manufacturing, handling, storage, use or disposal of an industrial chemical are kept.

Offence-related searches and seizures

87. (1) Where an inspector has reasonable grounds for suspecting that there may be on any premises a particular thing that may afford evidence as to the commission of an offence against this Act, the inspector may:

- (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under subsection (2);

enter the premises, and:

- (c) search the premises for the thing; and
- (d) if the inspector finds the thing on or in the premises—seize the thing.

(2) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be upon or in any premises a particular thing that may afford evidence as to the commission of an offence against this Act and the information sets out those grounds, the magistrate may issue a search warrant in accordance with the prescribed form authorising an inspector named in the warrant with assistance, and by such force, as is necessary and reasonable, to enter the premises and exercise the powers referred to in paragraphs (1) (c) and (d) in respect of the thing.

- (3) A magistrate must not issue a warrant under subsection (2) unless:
- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
 - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

- (4) A warrant issued under subsection (2) must state:
- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised; and
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) a description of the kind of things to be seized; and
 - (d) a day, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

(5) If, in the course of searching under a warrant issued under this section for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes, on reasonable grounds, to be:

- (a) a thing that will afford evidence as to the commission of the offence, although not the thing specified in the warrant; or
- (b) a thing that will afford evidence as to the commission of another offence against this Act;

and the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is to be taken to authorise the inspector to seize that thing.

(6) Where an inspector seizes any thing under subsection (1), the inspector may keep the thing for up to 60 days after the seizure or, if proceedings for an offence against this Act in respect of which the thing may afford evidence are instituted within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

(7) The Minister may authorise any thing seized under subsection (1) to be released to the owner, or to the person from whom the thing was seized, either unconditionally or on such conditions as the Minister thinks fit.

(8) In this section:

“offence against this Act” includes:

- (a) an offence against the regulations; and
- (b) an offence against section 6, 7 or 7A of the *Crimes Act 1914* in relation to an offence against this Act; and

- (c) an offence against subsection 86 (1) of the *Crimes Act 1914* because of paragraph (a) of that subsection, being an offence in relation to an offence against this Act.

Power to require information and documents

88. (1) Subject to subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act or the regulations have been complied with, require a person to answer any questions put by the inspector and to produce any records or documents requested by the inspector.

(2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector first produces his or her identity card for inspection by the person.

(3) A person must not, without reasonable excuse, refuse or fail to answer a question or produce a record or document when required to do so under subsection (1).

Penalty: \$3,000.

(4) A person is excused from providing information or producing a record or document under subsection (1) on the ground that the information or production might tend to incriminate the person.

Exempt information given to inspectors

89. (1) Where an inspector:

- (a) requires a person to supply information under section 88; or
- (b) requires a person to produce a document under section 88; or
- (c) enters premises under section 86;

the person required or the occupier of the premises may:

- (d) apply to the Director in the approved form that some or all of:
 - (i) the information supplied; or
 - (ii) the information in the document; or
 - (iii) the information obtained because of the entry or the exercise of powers under section 86;

as the case may, be treated as exempt information under section 75; and

- (e) inform the inspector of the intention to apply and identify the information to which the application will relate.

(2) Where a person informs an inspector of an intention to make an application under paragraph (1) (c), then, until:

- (a) the application is made; or
- (b) the end of 7 days after the inspector was informed;

whichever happens first, the application is to be taken to have been made.

PART 5—ADMINISTRATION

Director

90. (1) There is to be a Director of Chemicals Notification and Assessment, who is to be appointed by the Governor-General.

(2) The Director is to be appointed on a full-time basis.

Functions of Director

91. (1) The Director has the functions conferred on him or her by this Act.

(2) The Director must manage the day to day administration of this Act and must do so under the direction of the Chief Executive Officer.

(3) The Chief Executive Officer may require the Director to perform functions or carry out duties for the Commission in relation to chemicals to the extent that they do not interfere with the performance of functions referred to in subsection (1) or (2).

Terms and conditions of appointment of Director

92. (1) The Director holds office for the period, not exceeding 5 years, specified in the instrument of appointment.

(2) A person who has reached the age of 65 years is not to be appointed as the Director and a person is not to be appointed as the Director for a period that extends beyond the day on which the person will reach that age.

(3) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

Remuneration of Director

93. (1) The Director is to be paid such remuneration as is determined by the Remuneration Tribunal.

(2) The Director is to be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence of Director

94. The Minister may grant leave of absence to the Director on the terms and conditions as to remuneration or otherwise that the Minister determines.

Resignation of Director

95. The Director may resign the office of Director by signed instrument delivered to the Governor-General.

Termination of appointment of Director

96. (1) The Governor-General may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.

(2) The Governor-General may terminate the appointment of the Director if the Director:

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b)** fails, without reasonable excuse, to comply with section 98; or
- (c)** is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days of any period of 12 months; or
- (d)** engages in paid employment outside the duties of the office of Director without the consent of the Minister.

Acting Director

97. (1) The Minister may appoint a person to act as the Director:

- (a)** during a vacancy in the office of Director, whether or not an appointment has previously been made to that office; or
- (b)** during any period, or during all periods, when the Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of that office;

but a person appointed to act during a vacancy is not to continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act under such an appointment is not invalid merely because:

- (a)** the occasion for the appointment had not arisen; or
- (b)** there was a defect or irregularity in connection with the appointment; or
- (c)** the appointment had ceased to have effect; or
- (d)** the occasion to act had not arisen or had ceased.

Disclosure of interests of Director

98. The Director must give written notice to the Minister of all direct or indirect pecuniary interests that the Director has or may have in any business, or in any body corporate carrying on a business.

Arrangements relating to staff of the Commission

99. (1) The Chief Executive Officer may make the services of members of the staff of the Commission available for the purposes of assessing chemicals under this Act or assisting in the administration of this Act.

(2) While a person is performing services made available under subsection (1), that person must do so in accordance with the directions of the Director and not otherwise.

(3) Functions of the Director referred to in subsection 91 (3) may be functions relating to the control of members of the staff of the Commission referred to in subsection (1) while they are performing functions and duties for the Commission.

Arrangements relating to staff of Departments

100. (1) The Chairperson may arrange with the Secretary of a Department for the services of officers or employees in the Department to be made available for the purposes of assessing chemicals under this Act.

(2) While a person is performing services under an arrangement under this section, that person shall perform his or her functions and duties in accordance with the directions of the Director and not otherwise.

PART 6—MISCELLANEOUS

Legal proceedings not to lie

101. No action or other proceeding lies against the Commonwealth or an officer in respect of any loss incurred, or any damage suffered, because of reliance on an assessment made or a report prepared under this Act.

Applications for review

102. (1) Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Tribunal for review of:

- (a) a decision by the Minister for the purposes of subsection 30 (1), (3) or (5), 31 (3), 44 (5), 51 (1), 57 (6), 61 (2), 67 (1) or 68 (6);
or
- (b) a decision by the Director for the purposes of subsection 13 (2), 14 (4), 17 (4) or 19 (8), section 22, subsection 24 (1), (3) or (4), 27 (1), (2) or (4) or 28 (2), paragraph 37 (2) (b), subsection 40 (6), paragraph 44 (1) (d) or (2) (b), section 52, subsection 58 (3), 65 (2), 69 (1), 73 (6) or 75 (1) or paragraph 79 (a).

(2) In subsection (1):

“**decision**” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Statement to accompany notice of decisions

103. (1) Where the Minister or the Director makes a decision of a kind referred to in subsection 102 (1) and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice is to include a statement to the effect that:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made by or on behalf of that person to the Administrative Appeals Tribunal for review of that decision; and
- (b) except where subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf

of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(2) Any contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

Delegation by Minister

104. The Minister may by signed instrument delegate to:

- (a) the holder of an office established by an Act; or
- (b) the person holding or performing the duties of the office of Secretary to the Department; or
- (c) a person holding or performing the duties of a Senior Executive Service office within the meaning of the *Public Service Act 1922*, being an office in the Department;

all or any of the Minister's functions or powers under this Act, other than those under sections 30, 41 and 43, subsections 61 (2) and 67 (1) and sections 83 and 105.

Variation of Schedule

105. (1) The Minister may, by instrument published in the Chemical Gazette, declare that the Schedule is to be taken to be amended in a manner specified in the instrument, and that declaration has effect accordingly.

(2) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) For the purposes of section 8 of the *Acts Interpretation Act 1901*, a declaration under subsection (1) that is taken to amend the Schedule by way of repealing part of it is to be taken to be an Act that repeals that part.

(4) The Minister is to cause all necessary action to be taken to ensure that, where the Schedule is taken to be amended by a declaration in force under subsection (1), a copy of the Schedule as taken to be amended is available for inspection by the public at the prescribed places at the prescribed times, and on payment of the prescribed fee (if any).

International obligations on movements of industrial chemicals out of Australia

106. (1) Where Australia is required, by an international agreement, to notify another country of the export from Australia of certain industrial chemicals, the Director may publish in the Chemical Gazette a notice:

- (a) identifying the agreement; and
- (b) listing the names by which the chemicals are known to the public; and

(c) requiring all persons who export from Australia an industrial chemical so listed to give the Director information in the approved form about the movements of the chemical out of Australia.

(2) The notice may require information to be given in relation to:

(a) future movements of the chemical out of Australia by the exporter; or

(b) movements of the chemical out of Australia by the exporter that have occurred in the period of 5 years immediately before the publication of the notice; or

(c) both future and past movements as described in paragraphs (a) and (b).

(3) The Director may inform a country, or the appropriate authority of a country, regarding the movements out of Australia of a chemical listed under subsection (1).

(4) The Director may convey the information to a country or its appropriate authority in such terms and on such conditions as the Director thinks fit, having regard to:

(a) the requirements of the relevant international agreement; and

(b) the exporter's interest (if any) in maintaining confidentiality in relation to the export of the chemical.

Chemical Gazette

107. The Director must take all necessary action to ensure that a copy of each Chemical Gazette that contains a notice under this Act is available for inspection by the public at the prescribed places at the prescribed times.

Annual report

108. (1) The Director must, as soon as practicable after the end of each financial year, prepare and submit to the Minister a report on the operation of this Act during that year.

(2) The Minister is to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(3) If this Act does not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of this Act and ending on the next 30 June as if:

(a) if the period is less than 6 months—the period were included in the next financial year; or

(b) in any other case—the period were a financial year.

Conduct by directors, servants or agents

109. (1) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her apparent authority is to be taken, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Fees

110. (1) Regulations may prescribe fees, or a method of calculating fees to be paid to the Commonwealth in respect of each of the following:

- (a) an application under subsection 14 (3);
- (b) an application under subsection 17 (3) to be the holder of a confidence;
- (c) a statement under subsection 19 (7);
- (d) an application for authorisation of the introduction of an industrial chemical under section 22;
- (e) an application under section 23 for an assessment certificate, not being an application to which paragraph 41 (3) (d) or subsection 44 (1) applies;
- (f) an application under section 24 to vary the requirements of section 23;
- (g) an application under section 25, 29, 42, 45, 50, 60, 66 or 89 that information be treated as exempt information;
- (h) an application under section 30 for an introduction permit;
- (j) an application under section 37 for the variation of a recommendation;
- (k) an application under section 40 for the variation of a recommendation;
- (m) an application for an assessment certificate, being an application to which paragraph 41 (3) (d) applies;
- (n) a nomination under subsection 43 (3) of a foreign scheme;
- (p) an application for an assessment certificate, being an application to which subsection 44 (1) applies;
- (q) an application under subsection 55 (1) for an assessment;
- (r) a late application under subsection 55 (2) for an assessment;
- (s) secondary notification required by section 65;
- (t) an inspection of a public report under section 78;
- (u) an inquiry under section 79.

(2) Fees are due and payable in such manner and at such time or times as are prescribed.

(3) Where a fee that is required to be paid at the time of making an application or inquiry is not so paid, the application or inquiry is to be taken not to have been duly made.

(4) Where a fee that is required to be paid by a particular date after the making of an application or inquiry is not paid by that date, the application or inquiry is to be taken to have been withdrawn at that date, but the withdrawal of the application or inquiry does not affect any liability for the payment of any fee in respect of work done in respect of the application or inquiry before it is taken to have been so withdrawn.

(5) The regulations may prescribe circumstances in which the Director may, on behalf of the Commonwealth, wholly or partly waive or remit fees that would otherwise be payable under this section.

(6) A prescribed fee is not to be such as to amount to taxation.

Regulations

111. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular:

- (c) declaring that a specified new industrial chemical may be introduced even though the person introducing it does not hold an assessment certificate in force in relation to it, if the chemical is:
 - (i) a new industrial chemical that is similar to a listed industrial chemical or to an industrial chemical that has been assessed under Part 3; or
 - (ii) a substance or mixture of substances of a kind referred to in paragraph (f) of the definition of “agricultural chemical” in subsection 7 (2) or in paragraph (c) of the definition of “veterinary chemical product” in subsection 7 (2); and
 - (d) prescribing the matters to be included in arrangements under section 41; and
 - (e) prescribing penalties, not exceeding, in the case of a natural person, a fine of \$1,000 and, in the case of a body corporate, a fine of \$5,000, for offences under the regulations.
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SCHEDULE

Section 23

**MATTERS TO BE DEALT WITH IN NOTIFICATION STATEMENT
ABOUT CHEMICAL**

PART A

1. Identification of which of subsections 23 (4), (5), (6), (7), (8) and (9) applies to the chemical.
2. Summary of the chemical's health effects and environmental effects.
3. Bibliography of the publications referred to in the statement.

PART B

1. The following matters identifying the chemical, and, in the case of a synthetic polymer, each other chemical that is one of its constituent monomers:
 - (a) the chemical name of the chemical, that is to say:
 - (i) in the case of a pure chemical—the name for it to be used in the Australian Inventory of Chemical Substances, that is the chemical abstracts (CA) preferred Index Name, or, if such a name is not available, the name for it to be used by the International Union for Pure and Applied Chemistry; or
 - (ii) in any other case—as complete a description of the chemical as is practicable;
including, in the case of a biopolymer, a description of the biological source of the biopolymer;
 - (b) the name or names by which the chemical is known or identified in the scientific or technical literature;
 - (c) the name under which the chemical has been, or will be, marketed;
 - (d) the number assigned to the chemical by the service known as the Chemical Abstract Service;
 - (e) the chemical's molecular formula and structural formula;
 - (f) the chemical's gram-molecular weight;
 - (g) copies of spectra which have been measured to confirm the chemical's structural formula.
2. The following matters showing the composition of the chemical:
 - (a) the degree of purity of the chemical, that is to say the weight-percentage of a sample of the chemical that is not an impurity;
 - (b) the weight-percentage of a sample of the chemical that is a known or reasonably anticipated impurity, including an isomer or a by-product, of a hazardous or toxic nature and details of the toxic properties and hazardous properties of the impurities;
 - (c) the weight-percentage of a sample of the chemical that is a non-hazardous impurity of not less than 1% by weight of the sample;

SCHEDULE—continued

- (d) the weight percentage of a sample of the chemical that is an additive or adjuvant and the identity of the additives or adjuvants.
3. The proposed uses of the chemical in descending order of importance and the approximate percentage of the quantity of the chemical to be introduced by the notifier that is to have each use.
 4. The appearance, being the colour and form, of the chemical at 20° celsius and 101.3 kPa and a description of the odour (including the odour threshold) and volatility of the chemical.
 5. The quantity, in a range of tonnes per year of 1 to 10, 10 to 100, 100 to 1,000 and over 1,000, of the chemical proposed to be imported into Australia by the notifier in each of the next 5 years and the quantity, in such a range, of it proposed to be manufactured in Australia by the notifier in each of those years.
 6. The following matters affecting occupational health and safety:
 - (a) data about occupational exposure factors, that is to say:
 - (i) the number, and categories, of workers to be involved in working with the chemical; and
 - (ii) the nature of the work to be done by them; and
 - (iii) the safety procedures to be observed when handling the chemical; and
 - (iv) a brief description of the training and education in safe working practices to be given to those workers; and
 - (v) data about the occurrence of work related injuries and diseases affecting workers dealing with the chemical; and
 - (vi) any other data relating to occupational hazard associated with the chemical; and
 - (b) a list of health conditions (if any) which indicate that the notified chemical should not be used; and
 - (c) particulars of procedures for the atmospheric monitoring and biological monitoring of the effects of the chemical; and
 - (d) information held, or reasonably obtainable, by the notifier about studies and observations of health problems or adverse symptoms occurring in humans exposed to the substance.
 7. The following matters affecting the impact of the chemical on the environment:
 - (a) where the chemical is to be manufactured or reformulated in Australia:
 - (i) the site of the manufacture or reformulation; and
 - (ii) the processes to be carried out at that site; and
 - (iii) information about the release of chemicals into the environment likely to occur at that site;

SCHEDULE—continued

- (b) in respect of each use of the chemical, information about the situations in which the chemical will be released into the environment and the quantity and concentration of the release;
 - (c) the requirements for the safe storage of the chemical;
 - (d) a description of all procedures for the disposal of the chemical and the identity and hazards of any degradation products resulting from the disposal.
8. A brief description of any way in which the chemical could be harmful or hazardous to the health of the public at large.
9. The following physical and chemical data about the chemical:
- (a) whichever of the melting point, boiling point or freezing point of the chemical is appropriate;
 - (b) the chemical's density in kg/m³, and:
 - (i) in the case of a gas—its specific gravity where air = 1; and
 - (ii) in the case of a liquid—its liquid density and vapour density;
 - (c) the chemical's vapour pressure in kilopascals at 25°C;
 - (d) the chemical's solubility in grams per litre in water at 20°C;
 - (e) in the case of a chemical whose water solubility exceeds 10⁻⁶ gms/litre—the degrees of hydrolysis at 25°C at pH values of 4-9 and 1-2;
 - (f) in the case of a chemical that dissolves in water without dissociation or association and which is not surface-active—the partition coefficient (n-octanol/water) at 20°C expressed as log P_{ow};
 - (g) information about the adsorption and desorption of the chemical to and from standard soils;
 - (h) in the case of a chemical that dissociates in water—the dissociation constant expressed as pK_a determined by a specified manner;
 - (j) (i) in the case of a chemical that is a solid—the mean particle size and size range including the respirable fraction (1-10 microns); or
 - (ii) in the case of a chemical that is fibrous—fibre length and length range;
 - (k) the flash point in °C of the chemical as determined by whichever of the open cup or closed cup method is specified in the notification statement;
 - (m) the degree of the chemical's flammability, including:
 - (i) the upper and lower limits of flammability in air; and
 - (ii) details of the nature and identity of toxic and hazardous products of the chemical's combustion;
 - (n) the minimum temperature for the chemical's auto ignition;
 - (p) information about the chemical's potential (if any) to detonate as the result of heat, shock or friction;

SCHEDULE—continued

- (q) information about the stability and reactivity of the chemical, including:
 - (i) particulars of conditions constituting the chemical's instability; and
 - (ii) information about the products of the chemical's decomposition and their hazards;being data obtained from tests:
 - (r) of samples of the chemical of a specified purity as described in paragraph 2 (a); and
 - (s) by a specified authority or organisation; and
 - (t) conducted under specified conditions; and
 - (u) conducted in accordance with the principles of good laboratory practice.
- 10. Identification of the analytical methods for the detection and determination of the chemical.
- 11. Particulars of the labels in the presented form to be fixed to products consisting of or containing the chemical.
- 12. Particulars of the proposed Material Safety Data Sheet in the prescribed form for the chemical and for all commercially available products, or substances used in the workplace, containing the chemical.
- 13. (a) a full description of procedures for making the chemical harmless in an emergency in the workplace; and
(b) a full description of procedures for making the chemical harmless in an emergency outside the workplace.

PART C

The following data about the effects of the chemical:

- (a) the chemical's toxic effects after a single oral administration;
- (b) the chemical's toxic effects after a single dermal exposure;
- (c) the chemical's toxic effects on inhalation;
- (d) in the case of a chemical that does not have predictable corrosive properties—the extent of dermal irritation caused by the chemical;
- (e) in the case of a chemical that does not have predictable corrosive properties—the extent of eye irritation caused by the chemical;
- (f) any sensitising potential of the chemical;
- (g) the toxic effects of the chemical on administration for a period of 10 to 14 days;
- (h) any induction by the chemical of point mutations in microbial test systems;
- (j) any induction by the chemical of germ cell damage;

SCHEDULE—continued

- (k) any production by the chemical of chromosome damage in mammalian cells grown *in vitro*;
 - (m) the toxicity of the chemical to fish after their continuous exposure for 4 days to a series of concentrations of the chemical in water assessed by the test known as the Fish Acute Toxicity Test;
 - (n) the toxicity of the chemical to aquatic invertebrates shown by the effects of the chemical on daphnids exposed to a series of concentrations of the chemical in water assessed by the test known as *Daphnia* sp, Acute Immobilisation Test and Reproduction Test;
 - (p) the effects of the chemical on algae exposed for at least 3 days to a series of concentrations of the chemical in water assessed by the test known as Algal Growth Inhibition Test;
 - (q) the tendency of the chemical to degrade assessed using the test known as a Ready Biodegradability Test;
 - (r) the potential of the chemical to bioaccumulate in both aquatic and land environments;
- being data obtained:
- (s) by specified methods; and
 - (t) from specified raw data; and
 - (u) in the case of paragraphs (h), (j) and (k)—having regard to the likely handling of the chemical.

PART D

1. The weight-percentage of the total ingredients for the polymer that is represented by each ingredient.
2. The number-average molecular weight of the polymer or, where polymers of more than one molecular weight composition are to be introduced, the lowest number-average molecular weight.
3. The weight-percentage of low molecular weight species of the polymer on its introduction represented by each residual monomer.
4. The maximum weight percentage of low molecular weight species of the polymer below 1,000.
5. Information about all products resulting from the degradation, decomposition or depolymerisation of the polymer.
6. Information on the natural loss of monomers, additives and impurities from the polymer.

[Minister's second reading speech made in—
House of Representatives on 24 October 1989
Senate on 19 December 1989]