

EXPLANATORY STATEMENT

Select Legislative Instrument No. 143, 2014

Subject – *Industrial Chemicals (Notification and Assessment) Act 1989*

Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Regulation 2014

Section 111 of the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Australia has ratified the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Convention), done at Rotterdam on 10 September 1998. The Convention promotes shared responsibility and cooperative efforts in the international trade of certain hazardous chemicals. Annex III of the Convention contains a list of chemicals which are subject to the Convention's Prior Informed Consent Procedure, which provides for information exchange regarding the import and export of those chemicals. It aims to ensure that countries do not export listed chemicals to other countries that have not provided their consent to receive them. Certain industrial chemicals were recently included in Annex III of the Convention.

Subsection 106(1) of the Act provides that if an industrial chemical is the subject of a prescribed international agreement to which Australia is a party, the regulations may prohibit, either absolutely or subject to such conditions or restrictions as are prescribed, the introduction (import or manufacture) or export of the industrial chemical.

The *Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Regulation 2014* (the Regulation) amends those chemicals recently added to Annex III of the Convention to the existing list of chemicals subject to prior informed consent for introduction or export.

This will ensure that Australia can fulfil its obligations under the terms of the Convention which require parties to take regulatory action regarding chemicals listed in Annex III.

Details of the proposed Regulation are set out in the [Attachment](#).

Subsection 106(2) of the Act requires that amending regulations cannot be made until 30 days after the Director of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) has published a notice in the *Chemical Gazette* seeking information from all persons who introduce or export those chemicals proposed for inclusion in the regulations. To meet this statutory requirement, NICNAS published a notice in the *Chemical Gazette* of 3 June 2014 identifying the proposed amendments. No responses were received.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Consultation

In preparation for the Conference of the Parties to the Rotterdam Convention for the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade (the Convention), the then Department of Sustainability, Environment, Water, Population and Communities (now called the Department of the Environment, the Designated National Authority for the Convention) consulted, and received approval for the proposed changes from the following departments and agencies:

Department of Agriculture
Department of Agriculture – Australian Pesticides and Veterinary Medicines Authority (APVMA)
Department of Employment – Asbestos Safety and Eradication Agency
Department of Finance and Deregulation – Office of Best Practice Regulation
Department of Foreign Affairs and Trade
Department of Health
Department of Health - National Industrial Chemicals Notification and Assessment Scheme (NICNAS)
Department of Industry

In addition, the following agencies were consulted in regards to the listing of commercial-pentabromodiphenyl ether, commercial-octabromodiphenyl ether and PFOS in Annex III of the Convention. No opposition was raised by any of the listed agencies in relation to the proposed amendments.

Australian Government Departments

Attorney-General's Department – Office of International Law (OIL)
Department of Agriculture
Department of Agriculture – Australian Pesticides and Veterinary Medicines Authority (APVMA)
Department of Foreign Affairs and Trade
Department of Health - National Industrial Chemicals Notification and Assessment Scheme (NICNAS)

State and Territory environment agencies

Australian Capital Territory – Environment and Sustainable Development Directorate
New South Wales – Environment Protection Authority
Northern Territory – Environment Protection Authority
Queensland – Department of Environment and Heritage Protection
South Australia – Environment Protection Authority
Tasmania – Department of Primary Industries, Parks, Water and Environment
Victoria – Environment Protection Authority
Western Australia – Department of Environment Regulation

Consultations were also undertaken by the Department of the Environment with the small number of Australian companies importing PFOS and PFOS-containing products. These companies indicated that listing these chemicals was unlikely to change their business practices.

Commercial-pentabromodiphenyl ether is currently under assessment by NICNAS and is subject to an import ban as a result. Commercial-octabromodiphenyl ether is not used in Australia. Consultation with industry was not undertaken regarding these chemicals.

Details of the *Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Regulation 2014*

Section 1 – Name of regulation

Section 1 provides for the Regulation to be referred to as the *Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Regulation 2014*.

Section 2 – Commencement

Section 2 provides for the Regulation to commence the day after registration on the Federal Register of Legislative Instruments.

Section 3 – Authority

This Regulation is made under the *Industrial Chemicals (Notification and Assessment) Act 1989*.

Section 4 – Schedule

Provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Industrial Chemicals (Notification and Assessment) Regulations 1990

Item 1 – Regulation 2

This item inserts definitions for “*Rotterdam Convention*” and “*Stockholm Convention*” into regulation 2 so that those definitions can be applied anywhere within the Regulations that the conventions are mentioned.

Items 2 and 3 – Regulation 11B

Regulation 11B contained the definitions of “*Rotterdam Convention*” and “*Stockholm Convention*”. Having the definitions in regulation 11B limited their application to regulations 11B and 11C. These items delete the definitions of “*Rotterdam Convention*” and “*Stockholm Convention*” from where they were defined by deleting subregulation 11B(2) and make a consequential change to subregulation 11B(1) as a result of the deletion of subregulation 11B(2).

Item 4 – Regulation 11C

This regulation lists industrial chemicals that are contained within Annex III of the Convention. This item inserts into the regulation the industrial chemicals recently included in Annex III thus fulfilling Australia’s obligations under the Convention to take regulatory action in respect of industrial chemicals listed in the Convention.

Item 5

Some of the industrial chemicals inserted into regulation 11C are not listed on the Australian Inventory of Chemical Substances (AICS). Under the Act, persons wishing to introduce (import or manufacture) chemicals not listed on the AICS for industrial uses are required to notify NICNAS and have these chemicals assessed prior to introduction. This item alerts introducers to the AICS status of those chemicals.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Regulation 2014

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the regulation

The instrument amends the *Industrial Chemicals (Notification and Assessment) Regulations 1990* (the Principal Regulations) to update the controls on the importation and exportation of certain chemicals in order to reflect changes to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention) to enable Australia to meet its obligations as a Party to the Convention.

The amendment to the Principal Regulations adds a number of industrial chemicals, recently listed under the Convention, which are considered to have adverse effects on human health and the environment.

The instrument further makes a minor technical amendment which relocates definitions in line with current drafting practice.

Human rights implications

The instrument does not engage any of the applicable rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Senator The Honourable Fiona Nash
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