

EXPLANATORY STATEMENT

Issued under the authority of the Minister for Regional Health, Regional Communications and
Local Government

Industrial Chemicals Charges (Customs) Act 2019

Industrial Chemicals Charges (Customs) Regulations 2020

The *Industrial Chemicals Charges (Customs) Regulations 2020* (the Regulations) set registration charges to give effect to the cost-recovery framework provided by the *Industrial Chemicals Charges (Customs) Act 2019*.

Authority

The *Industrial Chemicals Act 2019* (the IC Act) establishes the Australian Industrial Chemicals Introduction Scheme (AICIS), a new national regulatory framework for the introduction (importation or manufacture) of industrial chemicals. This scheme replaces the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), on 1 July 2020.

Section 13 of the IC Act provides that a person who introduces (imports or manufactures) an industrial chemical must be registered with AICIS. Section 20 of the IC Act provides that a person who is registered under the IC Act is liable to pay a registration charge. Paragraph 21(a) of the IC Act provides that the amount of registration charge payable is the amount prescribed by regulations made under the *Industrial Chemicals Charges (Customs) Act 2019* (the IC Charges (Customs) Act), so far as the charge is a duty of customs.

Section 9 of the IC Charges (Customs) Act provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The power to make the proposed Regulations would rely on authority in the IC Charges (Customs) Act which commences on 1 July 2020. The proposed Regulations would be made in advance of this commencement date. This is possible in accordance with section 4 of the *Acts Interpretation Act 1901*, which allows for the exercise of powers between enactment and commencement of an Act including, for example, the power to make regulations. The relevant empowering provision in the IC Charges (Customs) Act was assented to on 3 April 2019.

Purpose

The purpose of the Regulations is to prescribe the amount of registration charge payable by a person in relation to registration under the IC Act, so far as the charge is a duty of customs, for the purposes of section 7 of the IC Charges (Customs) Act. The Regulations set out an eight-level charging structure where the amount of registration charge payable is based on the value of relevant industrial chemicals introduced by the person in the previous financial year.

Background

It is government policy that the full costs of AICIS activities are recovered from the regulated industry through fees for services and charges. Cost recovery is considered appropriate because introducers will continue to create the need for industrial chemicals to be regulated in

the marketplace. NICNAS has built a cost recovery model to determine fees and charges for the new scheme in accordance with the Australian Government Charging Framework and Cost Recovery Guidelines.

Consultation

All stakeholders were invited to respond, in two rounds of public consultation, to: (1) a discussion paper on the principles for the design of fees and charges for AICIS (September/October 2019), and (2) a consultation paper on proposed fees and charges for AICIS (February/March 2020). NICNAS received submissions from industry stakeholders (including industry associations) and community organisations.

The charges strike a balance between stakeholder views and the resources required to fund the new scheme.

Details of the Regulations are set out in the Attachment.

The Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 July 2020, immediately after the commencement of the empowering provision in the IC Charges (Customs) Act.

Details of the *Industrial Chemicals Charges (Customs) Regulations 2020*

Part 1 – Preliminary

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Industrial Chemicals Charges (Customs) Regulations 2020*.

Section 2 - Commencement

This section provides for the Regulations to commence on 1 July 2020 (consistent with the commencement of section 3 of the *Industrial Chemicals Charges (Customs) Act 2019*).

Section 3 - Authority

This section provides that the *Industrial Chemicals Charges (Customs) Regulations 2020* is made under the *Industrial Chemicals Charges (Customs) Act 2019*.

Section 4 - Definitions

This section provides definitions for terms used in this instrument. Some of these definitions have the same meaning as in the *Industrial Chemicals Act 2019* (for example, *article, import, manufacture, incidentally-introduced chemical, naturally-occurring chemical*). The terms *relevant industrial chemical* and *value of the relevant industrial chemicals introduced* are also defined for the purposes of this instrument.

The term *relevant industrial chemical* is defined to mean an industrial chemical other than certain types of industrial chemicals listed in the definition. Types of industrial chemical excluded from the definition of *relevant industrial chemical* include a naturally-occurring chemical and an incidentally-introduced chemical. Another exclusion is for an industrial chemical that is introduced in goods, equipment, or a vehicle or other machinery, and only intended to be released for maintenance or servicing. This is intended to cover, for example, an industrial chemical:

- in an imported car or tractor, that would be released during vehicle maintenance
- in a vehicle air bag
- in grease in an office chair
- in lead acid batteries
- in kitchen appliances (such as gas in a refrigerator or freezer)
- in liquid in contained hydraulic cylinders and pistons
- in gas in contained pneumatic cylinders and pistons
- contained in liquid mercury weights
- in liquid mercury switches in electronics
- in liquid sodium filled valves in combustion engines

Part 2 – Registration charge

Section 5 – Amount of registration charge

This section would set out the amount of registration charge persons must pay in order to introduce industrial chemicals into Australia. The charge is used to fund the cost of all AICIS regulatory activities except fee-for-service activities (for example, evaluation of industrial chemicals listed on AICIS's Inventory; and monitoring and compliance activities).

The amount of the registration charge is based on an 8-level system determined in accordance with the value of the relevant industrial chemicals introduced by a person in the financial year preceding the registration year, with persons who introduce industrial chemicals of higher total value for a year, paying a higher charge. The 8 levels include a nil registration charge for introduction values of less than \$50,000 in the previous financial year (level 1) and a capped registration charge of \$40,000 for an introduction value of \$5,000,000 or more (level 8).

Section 6 – Value of relevant industrial chemicals introduced in financial year

This section would set out the method for calculating the value of industrial chemicals introduced in a financial year, which forms the basis for determining the registration charge payable under section 5. The method requires the introducer to sum the value of imported and manufactured industrial chemicals, with the imported industrial chemical value being the sum

of customs value, insurance and freight costs, and customs duty, and the manufactured industrial chemical value being the sum of labour and material costs, and factory costs. Introducers who use imported industrial chemicals to manufacture other industrial chemicals within Australia are able to subtract the value of imported industrial chemicals that were used in the manufacture of other industrial chemicals.

Statement of Compatibility with Human Rights

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

Industrial Chemicals Charges (Customs) Regulations 2020

This Disallowable Legislative 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 Disallowable Legislative Instrument

The *Industrial Chemicals Act 2019* (the Act) establishes the Australian Industrial Chemicals Introduction Scheme (AICIS), a new national regulatory framework for the introduction (importation or manufacture) of industrial chemicals. This scheme replaces the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), on 1 July 2020.

It is government policy that the full costs of AICIS activities are recovered from the regulated industry through fees for services and charges.

The purpose of the Regulations is to prescribe the amount of registration charge payable by a person in relation to registration under the Act, so far as the charge is a duty of customs, for the purposes of section 7 of the IC Charges (Customs) Act. The Regulations set out an eight-level charging structure where the amount of registration charge payable is based on the value of relevant industrial chemicals introduced by the person in the previous financial year.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.