

SUPPLEMENTARY EXPLANATORY STATEMENT

Approved by the Minister for Regional Health, Regional Communications and Local Government

Industrial Chemicals Charges (Customs) Act 2019

Industrial Chemicals Charges (Customs) Regulations 2020

Purpose of supplementary explanatory statement

This supplementary explanatory statement amends the initial explanatory statement (the explanatory statement) for the *Industrial Chemicals Charges (Customs) Regulations 2020* (F2020L00795) (the Regulations), in accordance with paragraph 15J(1)(c) of the *Legislation Act 2003* (the LA).

Amendments to explanatory statement for the Regulations

After the first existing paragraph in section 5 and before the second paragraph in section 5 to the explanatory statement, insert the new paragraphs below:

Section 6 of the *Industrial Chemicals Charges (Customs) Act 2019* (the Act) imposes a registration charge on certain introducers of industrial chemicals and section 7 of the Act specifies that the amount of the registration charge is as set out in the Regulations.

The Act does not set any strict limits on the imposition of the registration charge in that there is no cap on the amount that may be imposed; however, subsection 7(2) of the Act provides that the amount may be determined having regard to the value of industrial chemicals introduced by a person during a registration year or a financial year.

In accordance with the Australian Government Charging Framework and Cost Recovery Guidelines, the registration charge is imposed for regulatory services that are provided to a group of individuals or organisations (e.g. an industry sector) rather than to a specific individual or organisation. Consistent with this government policy, the registration charge is used to recover the cost of AICIS regulatory activities except for services provided directly to a specific individual or organisation, for which a fee is charged for each discrete service.

In this way, the registration charge enables recovery of the costs of AICIS's day-to-day regulation of the introduction of industrial chemicals. For example, the registration charge helps fund activities including post-market compliance monitoring and enforcement, provision of information and recommendations about managing risks arising from the introduction and use of industrial chemicals, collection and publication of information and statistics, and giving effect to Australia's international obligations relating to the regulation of industrial chemicals.

The charge is not intended to be characterised as a general taxation. Rather, the charge is a cost recovery levy, earmarked to fund activity that relates to the group of persons being charged (namely registrants introducing industrial chemicals into Australia in a registration year). As detailed in the Cost Recovery Guidelines, this is an appropriate circumstance in which to apply the guidelines to determine the relevant charge.

After the existing paragraph in section 6 insert the new paragraphs below:

Consistent with the Cost Recovery Guidelines, the amount payable bears a direct and reasonable relationship to the driver of regulatory activities because it approximates the level of resources used

to provide the activity across the regulated group. Consistent with the principle set out in the Act, the method for calculating the amount of the charge is based on the value of the industrial chemicals introduced; where such value (on an annual basis) broadly reflects the volume of introductions and thus the extent of exposure of workers, the public and the environment to those chemicals.

Specifying the amount of a charge or the method for calculating the amount of a charge in regulations, as opposed to the Act itself, provides an opportunity to amend the amount of the charge, and the method of its calculation, to take into account the real costs and number of regulated entities to avoid over or under recovery.

AICIS publishes an annual Cost Recovery Implementation Statement (CRIS) that details AICIS activities that are cost recovered, the cost recovery model (outputs and business processes, costs of the activity and design of the cost recovery charges), as well as options for cost recovery. The annual CRIS includes detailed information about financial estimates and performance, and the rationale for the proposed fees and charges for the coming year. This process provides for the method set by the Regulations to be reviewed to confirm the relevance of the volume levels used to determine the registration charge.