

EXPLANATORY STATEMENT

Issued by the Minister for the Environment and Water

Industrial Chemicals Environmental Management (Register) Act 2021

Industrial Chemicals Environmental Management (Register) Rules 2022

Authority

The *Industrial Chemicals Environmental Management (Register) Act 2021* (ICEMR Act) establishes a national framework to manage the ongoing import, export, manufacture, use, handling and disposal of industrial chemicals, in order to reduce impacts on the environment and limit people's exposure to industrial chemicals.

Subsection 76(1) of the ICEMR Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Industrial Chemicals Environmental Management (Register) Rules 2022* (the Rules) are made under subsection 76(1) of the ICEMR Act.

Paragraph (d) of the definition of *Commonwealth risk assessment* in section 7 of the ICEMR Act allows the rules to prescribe additional risk assessments (however described) to be a Commonwealth risk assessment.

Paragraph 11(3)(c) of the ICEMR Act allows the rules to prescribe additional decisions relating to an industrial chemical to be a *scheduling decision* for that chemical.

Paragraph 15(1)(f) of the ICEMR Act allows the rules to prescribe international agreements under which Australia has obligations concerning industrial chemicals.

The Rules are made for the purposes of paragraph (d) of the definition of Commonwealth risk assessment in section 7, paragraph 11(3)(c) and paragraph 15(1)(f) of the ICEMR Act.

Purpose

The Rules prescribe a number of minor operational matters that will ensure that the ICEMR Act can be properly implemented and achieve its objectives.

Background

In July 2015, the Commonwealth, States and Territories agreed to establish a National Standard for the environmental risk management of industrial chemicals (the National Standard – now known as IChEMS). The National Standard was intended to provide for a consistent, nation-wide approach to managing the risks that industrial chemicals may pose to the environment.

The ICEMR Act provides the legislative basis for establishing the National Standard by enabling the Minister to:

- make scheduling decisions in relation to an industrial chemical. A scheduling decision can categorise an industrial chemical and set out the controls applicable to the import,

export, manufacture, use, handling and disposal of an industrial chemical. Controls may include restrictions or prohibitions on any of these activities; and

- establish, by legislative instrument, a register of scheduling decisions, which will record all scheduling decisions for industrial chemicals (the Register).

Scheduling decisions will not be enforceable in and of themselves. Following the establishment of this legislative framework, and as agreed in 2015, the Commonwealth, States and Territories will be responsible for implementation and enforcement of the scheduling decisions, recorded in the Register, within their jurisdictions. This will drive national consistency in the management of industrial chemicals through a more streamlined, transparent, efficient and predictable approach to environmental risk management, providing better protection for the environment.

The ICEMR Act sets out what scheduling decisions are and the requirements for making scheduling decisions. This includes the matters to which the Minister must have regard when making, varying or revoking scheduling decisions. However, the ICEMR Act also allows the rules to prescribe additional matters to consider, and additional kinds of scheduling decisions, where appropriate. This is to ensure that the ICEMR Act is sufficiently flexible to be able to adapt to changing circumstances, technologies and international obligations.

Impact and effect

The Rules prescribe a kind of risk assessment, being assessments carried out by the former National Industrial Chemicals Notification and Assessment Scheme under the Inventory Multi-tiered Assessment and Prioritisation framework (IMAP assessment), to be an additional category of *Commonwealth risk assessment*. This means the Minister will be required to have regard to an IMAP assessment that is the most recent relevant Commonwealth risk assessment for an industrial chemical when making, varying or revoking a scheduling decision for, or relating to, that industrial chemical.

The Rules also prescribe two additional categories of scheduling decisions relating to an industrial chemical. These are:

- a. a decision to specify that the exportation, importation, manufacture or use of a product or article containing the chemical is prohibited, or restricted, in all circumstances or in specified circumstances; and
- b. a decision to specify one or more risk management measures for a product or article containing the chemical.

Prescribing these additional categories of scheduling decisions will allow the ICEMR Act to be used to implement Australia's international obligations concerning industrial chemicals which, in some cases, may require the direct regulation of some products and articles containing an industrial chemical. It will also allow the Minister to make scheduling decisions concerning products or articles containing an industrial chemical where the product or article is considered to pose a significant risk to the environment and needs to be appropriately managed to minimise potential harms.

The Rules also prescribe the following international agreements relating to industrial chemicals:

- a. the *Minamata Convention on Mercury*;
- b. the *Stockholm Convention on Persistent Organic Pollutants*;
- c. the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*.

The effect of this rule is that where Australia has relevant international obligations under any of these prescribed agreements, the Minister is required to have regard to those obligations when making, varying or revoking a scheduling decision for, or relating to, an a relevant industrial chemical.

Disallowance and sunseting

The Rules are exempt from disallowance and sunseting requirements under the *Legislation Act 2003* (Legislation Act). This is because the Rules are made under the ICEMR Act, which facilitates the establishment and operation of an inter-governmental scheme involving the Commonwealth and the States and Territories and authorises the Rules to be made for the purposes of that inter-governmental scheme.

Subsections 44(1) and 54(1) of the Legislation Act respectively provide that section 42 (concerning disallowance) and Part 4 of Chapter 3 (concerning sunseting) of that Act do not apply in relation to a legislative instrument or provision of a legislative instrument if the enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States, and authorises the instrument to be made by the body or for the purposes of the body or scheme.

Consultation

The Rules prescribe minor and machinery operational matters that will ensure that the ICEMR Act can be properly implemented and achieve its objectives. On this basis, no consultation on the specific instrument was conducted.

However, significant consultation with both industry and States and Territories was conducted between 2015 and 2020 concerning the development of the ICEMR Act, including Regulation Impact Statements. In addition, consultation on the implementation of the ICEMR framework is ongoing with both industry and States and Territories.

Details and operation

Details of the Rules are set out in the Attachment.

The Rules commence on the day after they are registered on the Federal Register of Legislation.

Other

The Rules are a legislative instrument for the purposes of the Legislation Act.

As the Rules are exempt from disallowance, in accordance with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* a Statement of Compatibility with Human Rights is not required.

Details of the Industrial Chemicals Environmental Management (Register) Rules 2022**Section 1 – Name**

1. Section 1 provides that the name of the instrument is the *Industrial Chemicals Environmental Management (Register) Rules 2022* (the Rules).

Section 2 - Commencement

2. Section 2 provides that the Rules commence on the day after the instrument is registered on the Federal Register of Legislation.
3. The note below the table provides that the table relates only to the provisions of the Rules as originally made. It will not be amended to deal with any later amendments of the Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments is not reflected in the table.
4. Subsection 2(2) clarifies that any information in column 3 of the table is not part of the Rules. Information may be inserted in this column, or edited in this column, in any published version of the Rules. For example, the date the Rules commenced will be inserted in this column once that has occurred.

Section 3 - Authority

5. Section 3 provides that the Rules are made under the *Industrial Chemicals Environmental Management (Register) Act 2021* (ICEMR Act).

Section 4 – Definitions

6. Section 4 defines key terms for the Rules, being *Act*, *IMAP assessment*, *Minamata Convention*, *Rotterdam Convention* and *Stockholm Convention*.
7. The term *IMAP assessment* is defined as a risk assessment (however described) carried out by the former National Industrial Chemicals Notification and Assessment Scheme under the Inventory Multi-tiered Assessment and Prioritisation framework. This definition is relevant to section 5 of the Rules.
8. The definitions of the Minamata, Rotterdam and Stockholm Conventions have the effect of incorporating the relevant Convention as it is in force for Australia from time to time. This will pick up any amendments to the Convention that Australia decides to ratify. It is appropriate to incorporate these international agreements as in force for Australia from time to time, in order to align with Australia's changing international obligations. The note under each of the definitions explain that the relevant Convention is available to be viewed at the Australian Treaties Library and provides the relevant reference for each Convention. The Australian Treaties Library is an online resource available on the Austlii website (<http://www.austlii.edu.au>) free of charge.

Section 5 – Specification of additional risk assessment

9. A key concept for the ICEMR Act is Commonwealth risk assessment. A *Commonwealth risk assessment* is defined in section 7 of the ICEMR Act as any of:
 - a. a report prepared under section 31, 57, 68 or 68A of the repealed *Industrial Chemicals (Notification and Assessment) Act 1989*; or
 - b. an assessment statement within the meaning of the *Industrial Chemicals Act 2019*; or
 - c. an evaluation statement within the meaning of the *Industrial Chemicals Act 2019*; or
 - d. a risk assessment (however described) that is specified in the rules.
10. The Commonwealth risk assessment is critical to the scheduling process as it will generally be the primary assessment document for an industrial chemical. The most recent relevant Commonwealth risk assessment for an industrial chemical is a mandatory consideration for the Minister when deciding whether to make, vary or revoke a scheduling decision for that chemical.
11. Section 5 of the Rules is made for the purposes of paragraph (d) of the definition of *Commonwealth risk assessment* and prescribes assessments carried out by the former National Industrial Chemicals Notification and Assessment Scheme under the Inventory Multi-tiered Assessment and Prioritisation framework (IMAP assessment) to be an additional category of Commonwealth risk assessments.
12. This means that, under paragraphs 15(1)(a) and (b) of the ICEMR Act, the Minister will be required to have regard to an IMAP assessment that is the only, or most recent, relevant Commonwealth risk assessment for an industrial chemical when making, varying or revoking a scheduling decision for, or relating to, that industrial chemical.
13. In addition, the effect of paragraph 16(1)(a) of the ICEMR Act is that the Minister will be able to choose to have regard to a relevant IMAP assessment for an industrial chemical (for the purposes of making, varying or revoking a scheduling decision for that chemical) even if the IMAP assessment is not the most recent relevant Commonwealth risk assessment for that chemical.
14. It is important that IMAP assessments be considered to be Commonwealth risk assessments, as a number of existing chemicals have only been assessed under the IMAP framework. Reassessing those chemicals under the newer statutory frameworks would result in a significant administrative and financial burden on the Commonwealth and industry, without a corresponding environmental benefit. IMAP assessments were conducted by the same agency carrying out risk assessments as defined in Section 7 of the ICEMR Act, and the methodology used is considered to provide sufficiently robust

information to properly inform the Minister for the purposes of making, varying or revoking a scheduling decision for the relevant industrial chemical.

Section 6 – Specification of additional decisions

15. Subsection 11(3) of the ICEMR Act sets out the different kinds of scheduling decisions.

These are:

- a. a decision to list the chemical in a particular Schedule or Schedules of the Register;
- b. a decision to specify any one or more of the following for a chemical that is listed on the Register:
 - i. that the export, import or manufacture of the chemical is prohibited or restricted, in all circumstances or in specified circumstances;
 - ii. that all or any end uses for the chemical are prohibited or restricted, in all circumstances or in specified circumstances;
 - iii. one or more end uses for the chemical;
 - iv. one or more risk management measures for the chemical or for any specified end uses for the chemical;
- c. a decision relating to the chemical that is of a kind specified in the rules.

16. The kinds of scheduling decisions set out in paragraphs 11(3)(a) and 11(3)(b) generally deal with regulating the industrial chemical (itself). This may include regulating the use of an industrial chemical in a particular product or article (for example, prohibiting or restricting a particular kind of industrial chemical from being used in the manufacture of certain products or articles).

17. The majority of scheduling decisions will fall within these categories; the intention of the ICEMR Act is to manage the ongoing import, export, manufacture, use, handling and disposal of industrial chemicals, in order to reduce impacts on the environment and limit people's exposure to industrial chemicals.

18. However, in some cases, it may be necessary to specify controls for the import, export, manufacture or use of particular kinds of products or articles containing an industrial chemical rather than (or in addition to) regulating the import, export, manufacture or use of the chemical itself. This is because some existing products or articles contain certain high concern industrial chemicals that pose a significant risk to the environment and those risks need to be appropriately managed to minimise potential harms.

19. In addition, some international conventions contain obligations that require direct regulation of products and articles containing particular industrial chemicals. Where

Australia chooses to ratify such conventions (or relevant parts of such conventions – for instance, specific chemicals under the Stockholm Convention), such obligations would apply to Australia and will need to be able to be implemented.

20. Section 6 of the Rules prescribes, for the purpose of paragraph 11(3)(c) of the ICEMR Act, the following additional kinds of decisions to be *scheduling decisions*:

- a. a decision to specify that the exportation, importation, manufacture or use of a product or article containing the chemical is prohibited, or restricted, in all circumstances or in specified circumstances; and
- b. a decision to specify one or more risk management measures for a product or article containing the chemical.

21. Including these kinds of decisions as additional categories of *scheduling decisions* allows the Minister to make scheduling decisions imposing controls on particular kinds of products and articles containing an industrial chemical. This will allow the environmental risks associated with the industrial chemicals contained in such products and articles to be appropriately managed. It will also provide assurance that Australia's international obligations (including future obligations) concerning products or articles containing industrial chemicals can be implemented through the ICEMR Act framework as intended. It is intended that the Minister will generally only make scheduling decisions concerning products and articles containing high concern chemicals.

Section 7 – Specification of international agreements

22. Section 15 of the ICEMR Act sets out the mandatory considerations for the Minister when making, varying or revoking a scheduling decision for an industrial chemical. Under paragraph 15(1)(f), the Minister is required to have regard to any relevant obligations Australia has under an international agreement prescribed by the rules.

23. Section 7 of the Rules prescribes the following international agreements for the purposes of paragraph 15(1)(f):

- a. the *Minamata Convention on Mercury*;
- b. the *Stockholm Convention on Persistent Organic Pollutants*;
- c. the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*.

24. These international agreements have been prescribed because they include obligations that are in force for Australia in respect of the environmental management of industrial chemicals (or that Australia may choose to ratify in the future).

25. The intention is that other international agreements may be added in the future if they include obligations that are in force for Australia regarding industrial chemicals.

26. The Minister is required to have regard to any relevant obligations under these agreements when making, varying or revoking a scheduling decision for, or relating to, an industrial chemical. However, an obligation under one or more of the listed Conventions is only relevant if it is in force for Australia. Where Australia has not ratified part of one of the listed Conventions (for example, particular chemicals covered by the Stockholm Convention), the Minister would not be required to have regard to any obligations under the Conventions pertaining to the unratified part (or chemical). The purpose of this rule is to ensure that scheduling decisions will not be inconsistent with Australia's international obligations, and will instead contribute to Australia meeting those obligations.