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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

# INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT BILL (No 2) 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of
the Minister for Industrial Relations,
Senator the Hon Peter Cook)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE SENATE TO THE BILL AS INTRODUCED

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# INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT BILL (No 2) 1992

## OUTLINE

The Bill amends the Industrial Chemicals (Notification and Assessment) Act 1989 ("the Act") to implement the main recommendations of a report made this year following a review of consultants into the regulatory impact of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) on industry. The major theme of the recommendations and the Bill is to reduce the regulatory burden to industry of NICNAS.

Currently, subject to some exceptions, when a new industrial chemical is imported into, or manufactured in, Australia, it is subject to full notification and assessment under the Act. The proposed amendments modify the notification and assessment regime in three areas with a view to reducing the regulatory burden on industry:

- low volume chemicals: – the amendments permit the introduction of chemicals in quantities up to a maximum of 100 kilograms in any calendar year with reduced notification and assessment requirements;

- synthetic polymers of low concern: – the amendments minimise notification and assessment requirements for certain chemicals that pose little threat to health or the environment; and

- eligible chemicals which are defined as chemicals that were eligible to be submitted for inclusion on the Australian Inventory of Chemical Substances during the period 1 December 1977 and 16 July 1990: – the amendments provide for an amnesty for the notification of the eligible chemicals.

The Bill also amends section 106 to enable regulations to be made to prohibit or restrict the introduction and export of chemicals that are the subject of prescribed international agreements.

The amendments do not jeopardise the integrity of NICNAS or its ability to ensure that the introduction of chemicals into Australia is not detrimental to occupational health and safety or to the environment.

## Financial Impact Statement

There are no significant financial implications. Fees will be payable on the making of applications to the Director of NICNAS for approvals in relation to low volume and eligible chemicals.

## Notes on Clauses

**Clause 1: Short title etc**

The short title of the Act is given.

**Clause 2: Commencement**

Clause 2 provides that clauses 1 and 2 operate from the date of Royal Assent and that if the remaining clauses have not been proclaimed within six months of the date of Royal Assent, the Bill will automatically take effect on the first day after the end of that period.

**Clause 3: Interpretation**

Subparagraph (a) amends the definition of "new industrial chemical" by omitting reference to section 13, which is repealed by this Bill, and by excluding reaction intermediates and incidentally-produced chemicals.

Subparagraph (b) deletes the definition of "Institute" which is not a term used in the Principal Act.

Subparagraph (c) inserts the following definitions: "eligible chemical", "export", "holder", "low volume permit", "low volume chemical", and "synthetic polymer of low concern".

**Clause 4: Inventory**

Reference to the Environment Department is removed from section 11 of the Principal Act.

**Clause 5: Content of Inventory**

Subclause 5(1) removes subparagraphs in section 12 of the Principal Act referring to spent provisions. These spent provisions relate to the transfer of chemicals listed on the Australian Inventory of Chemical Substances before the commencement of the Principal Act, and to chemicals, for which an application for inclusion on the Inventory had been received but not finalised by the Environment Department at the date of commencement of the Principal Act. All such transfers have been finalised.

Subclause (2) is a savings provision to ensure that all chemicals currently on the Inventory remain Listed Chemicals.

**Clause 6: Inclusion of chemicals the subject of submissions not finalised**

Section 13 of the Principal Act is spent and is repealed by this clause.

**Clause 7: Am ndment of Inventory**

A new clause is substituted for existing section 20. In addition to the power to amend the Inventory to correct an error (which existed under the repealed section 20), the Director is given the power to add additional information concerning chemicals on the Inventory at the date of commencement of this section. The intention of this amendment is to ensure the Inventory contains a full and complete record of the information required to be supplied under the Principal Act. Notice is required to be given in the Chemical Gazette.

**Clause 8: Division 4 – Amnesty in respect of Eligible Chemicals**

This clause inserts a new division. The objects, which are stated in new clause 20A, are to provide an amnesty for persons, who apply during the amnesty period, who have introduced chemicals into Australia since the commencement of the Principal Act without an assessment certificate where those chemicals were eligible for inclusion on the Inventory in the period between 1 December 1977 and 16 July 1990 ("eligible chemical" as defined).

Amnesty period

New clause 20B provides for a two year amnesty period.

Who may apply

New subclauses 20C(1) and (2) provide that a manufacturer or importer, or two or more of the same jointly, of an eligible chemical, may, before the end of the amnesty period, apply for the inclusion in the Inventory of that chemical, if no application has previously been made for the assessment of the chemical.

New clause 20C(3) specifies that an application may request the chemical be included in the confidential section of the Inventory.

How application is to be made

New clause 20D requires an application to be in writing, in approved form and must include certain specified information. The application must also be accompanied by a prescribed fee.

The information required includes: the identity of the chemical; the proposed use of the chemical; matters affecting occupational health and safety; matters affecting the environment; matters affecting public health; details of labelling and a Material Safety Data Sheet.

Determination of Application

New clause 20E requires that the Director determine the application as soon as possible and requires him or her to be satisfied of the following matters:

- that the chemical is an eligible chemical;
- with regard to the inherent nature of the chemical and any other relevant matters, the use of the chemical will not constitute an unreasonable risk to health or the environment;
- if the Director intends to include the chemical in the confidential section of the Inventory that the publication of some or all of the chemical's particulars would substantially prejudice the commercial interests of the applicant. This test is identical to the test applied in subsection 14(4) of the Principal Act to chemicals to which full assessment applies.

If the Director is not satisfied of the above matters, the application must be refused.

Effect of inclusion of chemical in Inventory

New clause 20F specifies that a chemical included in the Inventory pursuant to this Division is deemed to have been included in the Inventory from the commencement of section 11 of the Principal Act. As a result of this provision, any technical breach of section 21 caused by the introduction of a chemical without an assessment certificate, in the period between the commencement of the Principal Act and the chemical's inclusion in the Inventory pursuant to this Division, is deemed not to have been a breach of the Principal Act.

Effect of refusal of application

New clause 20G provides that where an application for amnesty in respect of a chemical, is refused, the person introducing that chemical is protected from prosecution for contraventions of section 21 of the Principal Act that occurred before the application was determined. It is intended that if an applicant continues to introduce such chemicals, without an assessment certificate after refusal of an application, they be liable for prosecution under section 21.

**Clause 9: Introduction of new industrial chemicals**

Section 21 of the Principal Act is amended by deleting reference to section 22 authorisations, (which section is deleted by clause 11 of the Bill), and references to reaction intermediates and incidentally-produced chemicals (which have been excluded from the definition of "new industrial chemical" by this Bill) and adding reference to a low volume permit.

The effect of inserting reference to a low volume permit is that a holder of such a permit in respect of a particular chemical, who introduces that chemical without an assessment certificate, will not contravene section 21.

**Clause 10: Division 1B – Low Volume Chemicals Permit System**

Object of permit system for low volume chemicals

New clause 21Q provides that the object of the low volume permit system is to establish a simple means of by-passing the full notification and assessment regime in relation to chemicals where it is proposed to introduce less than 100 kilograms of that chemical in any one calendar year while ensuring that adequate safeguards are maintained for such introduction.

Who may apply for permit

New clause 21R provides that the manufacturer or importer of a new industrial chemical, or any two or more of them jointly, may apply for a low volume permit.

How application is to be made

New subclause 21S(1) provides that an application must be in writing in the approved form given to the Director.

New subclause 21S(2) mandates other requirements of a valid application, namely:

- a statement of the purposes for which the chemical is to be introduced;
- a summary of its health and environmental effects;
- details of matters referred to in specified paragraphs of Part B of the Schedule. These requirements are consistent with other permit systems currently in place.
- a statement of the quantity of the chemical proposed to be introduced in the calendar year in which the application is made and the three following calendar years;
- payment of the prescribed fee;

Applicant may withdraw or amend application

New clause 21T entitles the applicant, by written notice to the Director, to withdraw or amend the application or any document that accompanies the application.

Determination of application

New clause 21U(1) requires the Director to determine the application within 20 days after it is made.

New clause 21U(2) lists the matters of which the Director must be satisfied before he or she must issue a low volume permit to the applicant. These matters are:

- that section 21S has been complied with in respect of the application;

- with respect to the inherent nature of the chemical, any guidelines prescribed for the purpose of this section or any other relevant matters, the chemical does not constitute an unreasonable risk to health or the environment;

- the total quantity of the chemical proposed to be introduced in any one calendar year, including amounts proposed to be introduced by other persons, does not exceed 100 kilograms;

New clause 21U(3) provides that if the Director is not satisfied of all the above matters, the application must be refused.

Duration of permit

New clause 21V specifies that the permit is valid for the period stated in the permit provided that the permit does not remain valid for more than 36 months from the date stated in the permit.

Permit may be subject to conditions

New clause 21W(1) imposes a condition on all permits granted that if the holder of the permit becomes aware of a change in any of the listed circumstances, the holder informs the Director within 28 days in writing of those changes. Broadly the changes contemplated relate to the function or use of the chemical, the amount to be introduced, circumstances of introduction (eg, commencement of manufacture within Australia), method of manufacture, and receipt of new information relating to health or environmental effects. Other matters may be prescribed as mandatory conditions. These matters are consistent with other similar requirements to inform the Director of changes in circumstances.

New clause 21W(2) specifies that the holder of the permit is taken to have become aware of circumstances if he or she ought reasonably to have become aware of them having regard to his or her ability, experience or qualifications, or the nature of the circumstances.

New clause 21W(3) entitles the Director to impose such conditions as are deemed necessary or desirable to ensure that the use of a particular low volume chemical does not constitute an unreasonable risk to health or to the environment.

New clause 21W(4) entitles the Director by written notice to revoke or vary a condition to which a permit is subject or impose one or more further conditions.

New clause 21W(5) creates an offence for the breach of a condition to which a permit is subject, without reasonable excuse, and imposes a maximum penalty of $30,000.

New clause 21W(6) entitles the Director to cancel a permit by written notice where conditions of that permit have been breached or any information provided by the holder of the permit, to the Director, in connection with that permit is false or misleading in a material respect. This power of revocation is subject to review (see section 102).

Form of permit

New clause 21X requires that the low volume permit be in a form approved by the Director. It is intended that the Director approve a form summarising essential information relating to the permit, for instance, the name of the holder, the period the certificate is to remain in force, the trade name and ingredients of the chemical, and the quantity of the chemical it authorises to be introduced.

Notice of permit to be published in Chemical Gazette

The Director is required by new clause 21Y to cause a notice to be published in the Chemical Gazette stating that a permit has been issued and setting out the name of the holder, the trade name of the chemical to which it applies, and the period of the permit.

Notice of refusal of application

Where the Director decides to refuse an application for a permit, new clause 21Z requires the Director to give written notice setting out, the reason for the decision, the findings of material questions of fact, and evidence on which such findings are based.

New subclause 21Z(2) deems an application to be refused if a Director fails to issue a permit within 20 days of receiving an application.

List of low volume chemicals

New clause 21ZA(1) requires the Director to maintain a list of low volume chemicals in respect of which a permit is in force. Subclause 2 requires the Director to publish the list of such chemicals in the Chemical Gazette at least once a year.

Exempt information

New clause 21ZB entitles an applicant for a low volume permit to request that certain information given in accordance with the application or pursuant to clause 21W(1), be treated as exempt information under section 75 of the Principal Act. This clause is intended to protect the commercial interests of applicants for low volume permits.

**Clause 11: Arranged introductions of a new chemical may continue**

Section 22 of the Principal Act, relating to introductions prior to the commencement of section 21 of the Act, is no longer operative and is repealed.

**Clause 12: Application for assessment certificate**

Section 23 of the Principal Act, which deals with the form of an application for an assessment certificate, is amended to make it subject to the new clause 24A (refer below) relating to synthetic polymers of low concern.

**Clause 13: Variation of requirement for notification statement in case of synthetic polymers of low concern**

New clause 24A is inserted. The only document required to accompany an application for assessment for a synthetic polymer of low concern is a prescribed form verified as correct by the applicant.

Synthetic polymers of low concern which are those polymers with prescribed characteristics, that are highly stable, non-volatile, and do not easily cross biological membranes and consequently pose little or no risk to health or the environment. Application by prescribed form streamlines the provision of information that must be supplied with an application for assessment in order to facilitate introduction of such chemicals without threatening the integrity of the scheme.

**Clause 14: Assessment of chemical**

Section 31(2) of the Principal Act is amended to provide that in the case of a synthetic polymer of low concern, the Director is required to prepare only an assessment report and full public report, and not a summary report, which, will not be materially different from the full public report.

**Clause 15: Contents of assessment report**

Section 33 of the Principal Act is amended to require that all assessment reports include a Material Safety Data Sheet in addition to the other listed requirements in that section.

**Clause 16: Full public report**

A new subclause 34(2) is inserted to require the Director to cause a copy of the full public report of a synthetic polymer of low concern to be published in the Chemical Gazette. Only summary reports for other chemicals assessed under the scheme are published in the Chemical Gazette (section 38(5)(c)).

**Clause 17: Summary report**

Clause 35 of the Principal Act is amended to reflect the fact that no summary report will be prepared after the assessment of a synthetic polymer of low concern.

**Claus 18: Notice to applicant on completion of report**

Clause 36 of the Principal Act is amended to reflect the fact that no summary report will be prepared in relation to a synthetic polymer of low concern.

**Claus 19: Application for variation of assessment report**

Clause 37 of the Principal Act is amended to reflect the fact that no summary report will be prepared for a synthetic polymer of low concern.

**Clause 20: Publication of report**

Section 38 of the Principal Act is amended in subparagraph (a) by deleting reference to Secretaries of specific Commonwealth departments. Subparagraph (b) amends subsection 38(5)(a)(iv) to refer in general, to such authorities of the Commonwealth as are prescribed.

Subsections 38(5)(c) and (7) are amended in subparagraph (c) to reflect the fact that no summary report is to be published in relation to a synthetic polymer of low concern.

Subsections 38(6) and (6)(a) are amended in subparagraphs (d) and (e) to facilitate reporting of assessment of chemicals at a Commonwealth level and are consistent with the amendments made by subparagraphs (a) and (b).

**Clause 21: Giving of assessment certificates**

Subsection 39(1) of the Principal Act is amended by deleting reference to specific matters to be included in an assessment certificate. To increase flexibility, the matters to be included in the certificate are to be prescribed by regulation.

**Clause 22: Application for variation of full public report**

Where a full public report has been published pursuant to subsection 34(2), the applicant may apply to have the published details varied under the provisions of section 40.

**Clause 23: H adlng**

The heading of Division 5 of Part 3 of the Principal Act is changed to "Priority Existing Chemicals" to more closely reflect the purpose of the Division.

**Clause 24: Application of Division**

Section 47 of the Principal Act is amended by deleting reference to incidentally-produced chemicals as a result of amendment of the definition of "new industrial chemical".

**Clause 25: Exempt information**

Section 75 of the Principal Act is amended by inserting reference to low volume chemical permits. This amendment facilitates the protection of the commercial interests of applicants for low volume permits.

**Clause 26: Applications for review**

Section 102(1)(b) is amended by deleting reference to section 13 of the Principal Act which is repealed by this Bill. Decisions in relation to the grant on an application for amnesty (clause 21E), or a low volume permit (clause 21U), the imposition of conditions applicable to a low volume permit (subclauses 21W(3) and (4)), and the revocation of such a low volume permit (subclause 21W(6)) are also made reviewable.

**Clause 27: International obligations on movements of industrial chemicals into and out of Australia**

Section 106 of the Principal Act is repealed and a new section is inserted in its place that balances and strengthens the existing provisions of the Act. In particular, the introduction, as well as export of chemicals the subject of prescribed international agreements is brought within the operation of this section.

New subclause 106(1) allows the prohibition, by regulation, either absolutely, or subject to restrictions or conditions, of the introduction or export of a chemical, which is the subject of a prescribed international agreement.

New subclause 106(2)(a) provides that before a regulation can be made pursuant to subclause 106(1) the Director must publish a notice in the Chemical Gazette identifying the chemical and seeking information from persons involved in the introduction and export of that chemical. Subclause 106(2)(b) requires that a period of 30 days must elapse after publication of such notice before the making of a regulation.

New subclause 106(3) entitles the Minister to inform a country, an appropriate authority of a country, or a relevant international organisation in relation to the movement of a chemical specified for the purposes of subsection (1).

New subclause 106(4) entitles the Minister to give information pursuant to (3) above, as the Minister sees fit having regard to the relevant international agreement and any interest in maintaining the confidentiality of movements of the chemical.

New subclause 106(5) creates an offence for the contravention of a regulation made under subsection (1) without reasonable excuse. The maximum penalty on conviction is a fine not exceeding $30,000.

**Claus 28: Fees**

Section 110 of the Principal Act, in relation to fees that may be prescribed, is amended by adding reference to applications under the amnesty and low volume permit provisions (subclauses (a) and (c) respectively). It is intended that fees will be prescribed to come into effect at the time of commencement.

Subclause (b) deletes reference, in subparagraph 110(1)(d), to section 22 of the Principal Act which is repealed by clause 11 above.

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