

# Chapter 1

## Inquiry into the provisions of the Industrial Chemicals Bill 2017 and related bills

### Purpose of the Bills

1.1 On 1 June 2017, the Hon. Dr David Gillespie MP, Assistant Minister for Health (Assistant Minister), presented the following suite of bills to the House of Representatives (collectively, Bills):

- (a) Industrial Chemicals Bill 2017;
- (b) Industrial Chemicals (Consequential Amendment and Transitional Provisions) Bill 2017;
- (c) Industrial Chemicals (Notification and Assessment) Amendment Bill 2017;
- (d) Industrial Chemicals Charges (General) Bill 2017;
- (e) Industrial Chemicals Charges (Customs) Bill 2017; and
- (f) Industrial Chemicals Charges (Excise) Bill 2017.<sup>1</sup>

1.2 Together the Bills reform Australia's system of industrial chemicals regulation and establish a new scheme to be known as the Australian Industrial Chemicals Introduction Scheme (AICIS).<sup>2</sup> The new scheme replaces and simplifies the existing National Industrial Chemicals Notification and Assessment Scheme.<sup>3</sup>

### Background

1.3 In the 2015–16 Budget, the government announced plans to streamline the regulatory framework for industrial chemicals by focusing regulatory attention on the highest risk chemicals and seeking to remove barriers to lower risk introductions.<sup>4</sup>

1.4 The Assistant Minister noted in his second reading speech that the Industrial Chemicals Bill 2017 achieves the more streamlined regulatory approach foreshadowed in the 2015–16 Budget.<sup>5</sup>

### Key provisions of the Industrial Chemicals Bill 2017

1.5 The Industrial Chemicals Bill 2017 has 10 Parts.

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1 *House of Representatives Votes and Proceedings*, No. 57, 1 June 2017, pp. 810–811.

2 The Hon. Dr David Gillespie MP, Assistant Minister for Health, *House of Representatives Hansard*, 1 June 2017, p. 11.

3 The Hon. Dr Gillespie MP, *House of Representatives Hansard*, 1 June 2017, p. 11.

4 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2015–16*, p. 111.

5 The Hon. Dr Gillespie MP, *House of Representatives Hansard*, 1 June 2017, p. 11.

1.6 **Part 1** provides for preliminary machinery provisions and definitions, including the definition of an industrial chemical for the purposes of the legislation.

1.7 **Part 2** requires introducers of industrial chemicals to be registered, a Register to be kept and requires chemical introducers to pay a registration charge.

1.8 **Part 3** establishes a new system of risk-based categorisation of industrial chemical introductions.

1.9 **Part 4** provides a framework for the Executive Director to initiate evaluations of industrial chemicals or matters relating to industrial chemicals.

1.10 **Part 5** establishes the Australian Inventory of Industrial Chemicals and provides for the inclusion, variation or removal of an industrial chemical from the Inventory.

1.11 **Part 6** describes the information and reporting obligations of persons under the scheme and enables people to apply for confidential business information protection.

1.12 **Part 7** provides for monitoring, inspection and enforcement powers under the Regulatory Powers (Standard Provisions) Act 2014.

1.13 **Part 8** establishes the AICIS, the role and functions of the Executive Director and renames the Industrial Chemicals Special Account.

1.14 **Part 9** implements Australia's obligations under certain international agreements, such as the Rotterdam Convention, and enables bans or restrictions on industrial chemicals subject to certain international agreements.

1.15 **Part 10** contains miscellaneous provisions including a power to enable the Minister to make rules which will contain the operational detail of the scheme, and makes provision for applications and review rights. Part 10 also provides that animal test data should not be included with an application for a chemical to be used in a cosmetic product in some circumstances.

### **Key provisions of the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017**

1.16 Industrial chemicals are currently regulated by the *Industrial Chemicals (Notification and Assessment) Act 1989* (IC(NA) Act). The Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 amends the IC(NA) Act to enable the early introduction of some aspects of the industrial chemicals reforms.

1.17 The Explanatory Memorandum to the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 provides that the changes in the Bill will:

...reduce unnecessary regulatory burden (by reducing reporting requirements) and commence the process of reducing regulation for lower

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risk chemicals (by exempting polymers of low concern from notification requirements).<sup>6</sup>

1.18 Schedule 1 to the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 contains 12 items:

- Items 1–3 substitute the definitions of 'new synthetic polymer' and 'polymer of low concern' and allow for the introduction of these chemicals;
- Items 4–6 reduce the regulatory burden on introducers by relieving certain reporting requirements;
- Items 7–12 provide for transitional and administrative provisions relating to appeals and the registration charge payable by introducers.

1.19 The Explanatory Memorandum to the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 explains that the definition of 'new synthetic polymer' more closely aligns with international approaches and the amended definition of 'polymers of low concern' ensures that more polymers are exempted from reporting requirements.<sup>7</sup>

### **Key provisions of the Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017**

1.20 The Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017 provides for consequential amendments and implements transitional arrangements from the IC(NA) Act to the new Industrial Chemicals Bill 2017.

1.21 No submitter raised concerns about the Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017.

### **Purpose and key provisions of the Industrial Chemicals (Customs) Bill 2017; Industrial Chemicals Charges (Excise) Bill 2017; Industrial Chemicals Charges (General) Bill 2017**

1.22 The following bills (Charges Bills) are expressed in almost identical terms:

- Industrial Chemicals Charges (Customs) Bill 2017;
- Industrial Chemicals Charges (Excise) Bill 2017;
- Industrial Chemicals Charges (General) Bill 2017.

1.23 The Charges Bills impose a registration charge on the introducer of a chemical to the extent that the registration charge is customs duty, excise duty or neither a customs nor excise duty respectively.

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6 Explanatory Memorandum, Industrial Chemicals (Notification and Assessment) Amendment Bill 2017, p. 1.

7 Explanatory Memorandum, Industrial Chemicals (Notification and Assessment) Amendment Bill 2017, p. 3.

1.24 The amount of the charge will be prescribed by regulations or worked out in a method prescribed by the regulations.<sup>8</sup>

## **Legislative Scrutiny**

### *Parliamentary Joint Committee on Human Rights*

1.25 The Parliamentary Joint Committee on Human Rights did not consider that any of the bills raised human rights concerns.<sup>9</sup>

### *Scrutiny of Bills Committee*

1.26 Senate Standing Committee on the Scrutiny of Bills (Scrutiny of Bills Committee) gave initial consideration to the bills in *Scrutiny Digest No. 6 of 2017*.<sup>10</sup> The committee raised a number of concerns about the Bills and requested advice from the Assistant Minister.

### *Industrial Chemicals Bill 2017*

1.27 The Scrutiny of Bills Committee raised the following concerns about the Industrial Chemicals Bill 2017:

- that not all decisions are 'reviewable decisions' and the Explanatory Memorandum does not explain why some decisions are reviewable and others are not;<sup>11</sup>
- that clause 175 abrogates the privilege against self-incrimination but the Explanatory Memorandum does not explain why it is necessary to do so; and<sup>12</sup>
- that clause 180 provides that rules may be made that would incorporate material that may not be freely available and may make the law difficult to know.<sup>13</sup>

### *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017*

1.28 The Scrutiny of Bills Committee raised concerns that subitem 50(3) empowers rules to be made that would modify the effect of the Act.<sup>14</sup> The Scrutiny of Bills Committee accepted that the migration of chemicals from the existing inventory to the proposed inventory may require such a provision.

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8 Industrial Chemicals Charges (Customs) Bill 2017, cl. 7(1).

9 Joint Parliamentary Committee on Human Rights, *Report No. 5 of 2017* (14 June 2017) p. 49.

10 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) pp. 35–44.

11 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 35.

12 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 36.

13 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 37.

14 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 38.

1.29 The Scrutiny of Bills Committee also raised concerns that subitem 50(4) provides that subsection 12(2) of the *Legislation Act 2003* does not apply to rules made before 1 July 2020.<sup>15</sup> The Scrutiny of Bills Committee was concerned that the Explanatory Memorandum did not explain why such a provision needed to be overridden when making transitional rules.<sup>16</sup>

### *Charges Bills*

1.30 The Scrutiny of Bills Committee pointed out that there is no maximum charge or method to calculate a maximum charge in the Charges Bills. Accordingly, the committee requested advice from the Minister about why no limits had been imposed on the charges.<sup>17</sup>

### *Assistant Minister's response*

1.31 The Assistant Minister provided a response to the Scrutiny of Bills Committee in relation to each Bill on 28 June 2017.<sup>18</sup>

## **Conduct of the inquiry**

1.32 The Bills were introduced to the House of Representatives on 1 June 2017. Under the Senate's resolution of 10 May 2017, the committee was required to report to the Senate on 13 June 2017; however, the Senate approved two extensions of time for the committee to report on the Bills, first to 19 June 2017 and then to 8 August 2017.<sup>19</sup>

1.33 The committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 12 June 2017. A list of submissions to the inquiry can be found at Appendix 1.

1.34 The committee held a half-day public hearing on the Bills on 26 July 2017. A list of witnesses who gave evidence to the committee can be found at Appendix 2.

1.35 The committee thanks those submitters who contributed to the inquiry.

## **Notes on references**

1.36 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

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15 Section 12(2) of the *Legislation Act 2003* provides that a rule cannot apply before it is registered to the extent that it would disadvantage a person.

16 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) pp. 38–39.

17 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) pp. 40–43.

18 Scrutiny of Bills Committee, *Ministerial responses*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Ministerial\\_Responses](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Ministerial_Responses) (accessed 31 July 2017).

19 The Bills were automatically referred to the Senate Community Affairs Legislation Committee under a resolution of the Senate to refer time critical bills see: *Journals of the Senate*, No. 40, 10 May 2017, p. 1326. *Journals of the Senate*, No. 42, 13 June 2017, p. 1383; *Journals of the Senate*, No. 44, 15 June 2017, p. 1435.

