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Industrial Chemicals (Notification and
Assessment) Amendment (Rotterdam Convention)
Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 92 2003–04

Industrial Chemicals (Notification and Assessment)
Amendment (Rotterdam Convention) Bill 2004

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25 February 2004

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Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004

Date Introduced: 11 February 2004

House: House of Representatives

Portfolio: Health and Ageing

Commencement: The operational provisions of the Act (Schedule 1) commence immediately once *both* the Act has received Royal Assent and the Rotterdam Convention comes into force in Australia.

Purpose

To amend the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) as part of the legislative changes required to allow ratification of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the [Rotterdam Convention](#)).

Background

This is a companion Bill to the Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004.

In July 1999, Australia signed the Rotterdam Convention. As its name implies, the emphasis of the Rotterdam Convention is the exchange of information between countries so that importing countries are fully aware of the potential hazards of importing relevant chemicals and pesticides. The Convention does not actually ban any chemicals or pesticides. The main purpose of the Bill is to implement Australia's information obligations under the Convention, especially in relation to Articles 5(1) and 14(1)(a).

The Act which the Bill amends provides the legislative framework for the National Industrial Chemicals Notification and Assessment Scheme (NICNAS). NICNAS assesses industrial chemicals¹ that are proposed to be imported into, or manufactured in, Australia for the first time. The assessment is intended to identify potential risks to occupational health, public health and the environment that may be associated with the chemicals' use.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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Existing chemicals are also assessed where there are environmental or health concerns about these.

Main Provisions

Schedule 1

Item 1 inserts a new **Part 5A (new sections 100D-K)** into the Act.

Article 5(1) of the Convention requires that where a Party to the Convention has adopted ‘a final regulatory action’, it must notify the Convention Secretariat of this fact. Final regulatory action in this context means the completion of a process to ban or severely restrict the use of a chemical covered by the Convention. **New section 100E** requires the NICNAS Director (the Director) to notify the Australian designated national authority (the Authority)² if he or she is satisfied ‘that the Commonwealth has one or more laws banning or severely restricting the use of an industrial chemical in Australia’. The Director has similar obligations regarding notification regarding any State or Territory laws that have them same effect within the relevant jurisdiction, so long as these also have the ‘effect of banning or severely restricting the use of the industrial chemical in Australia’. For the purposes of the Director’s decision on this last point, the *Explanatory Memorandum* comments:³

a regulatory action in one or more States or Territories would not necessarily constitute a final regulatory action unless the law has the effect of severely restricting or banning the use of the chemical in Australia. For example, if only Victoria and NSW manufacture and use an industrial chemical (and no other States or Territories manufacture and use that chemical) and both States enact a law banning the use of that industrial chemical, the ban would have the effect of banning the use of the industrial chemical in Australia.

Once the Authority has been notified by the Director it must pass the information on to the Convention Secretariat within 90 days of the last of the laws contained in the Director’s notice coming into force. As soon as practical after notifying the Authority, the Director must also publish the relevant parts of the notice in the Chemical Gazette.⁴

Article 14(1)(a) of the Convention obliges Parties to facilitate the ‘exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of the Convention’. **New section 100F** requires the Director to provide, on a yearly basis, the Authority with the relevant Article 14(1)(a) information relating to industrial chemicals. The Authority must then forward the information to the Convention Secretariat as soon as practicable after receiving it. The Authority may also give any Party to the Convention all or some of the information that it receives from the Director under this section.

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New sections 100G-K deal with information gathering by the Director.

Under **new subsection 100G(1)**, where the Director believes on reasonable grounds both that a person has particular information or a particular document (hereafter ‘information’) *and* it is necessary to obtain the information to allow Australia to comply with the obligations under the Convention, the Director may require that the information be supplied to him or her. In the written notice regarding the required information, the Director must make it clear that it is an offence not to comply with the request: **new subsection 100G(2)**. At least 14 days must be allowed for the production of the information. The fact that the information might incriminate the person from whom it is requested cannot be used as a reason for not providing it: **new section 100H**. However, the usual limitations on its use in criminal proceedings apply – it can only be used against the individual supplying it in prosecutions for providing false or misleading information or a failure to provide the information. There is no protection against incrimination for companies, or persons other than to which the notice for information is directed.

New sections 100J and K are standard provisions regarding the copying and retention of documents produced under **new section 100G**.

Concluding Comments

Due to the fact this Bill is due to be debated in the House of Representatives very shortly after its introduction into Parliament, it has not been possible to research stakeholder views on the specific provisions of the Bill. However, formal consultations with stakeholders were conducted during mid-2002 regarding the proposed ratification of the Rotterdam Convention. These consultations and the views of stakeholders are summarised in the respective [National Interest Analysis](#) accompanying the tabling of the Conventions before Parliament on 9 September 2003. If the summaries are accurate regarding stakeholder views, there would appear to be wide support for ratification. During September and October 2003, the Joint Standing Committee on Treaties held a very brief inquiry into the Convention. The resultant [report](#) recommended that the Convention be ratified.

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Endnotes

- 1 The term ‘industrial chemical’ is defined in section 7 of the Act. The definition is complicated, but essentially it is a chemical that has a use other than in the agricultural, veterinary, therapeutic or food sectors.
- 2 The Authority is the Department, agency or person who has been designated by Australia to carry out the administrative functions required under the Convention in relation to industrial chemicals: see **new section 100D** and Article 4 of the Convention.
- 3 P. 4.
- 4 This is part of the general Gazette, but it is usually published only once a month.

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