

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industrial Relations  
the Honourable Peter Morris)

INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) BILL 1989GENERAL OUTLINE

The purpose of this Bill is to establish a notification and assessment system for industrial chemicals to aid in the protection of people at work, public health and the environment.

The Minister for Industrial Relations announced in October 1984 in connection with the establishment of the National Occupational Health and Safety Commission (NOHSC) that legislation dealing with industrial chemicals be developed. The legislation when enacted will be administered by NOHSC.

Considerable consultation has taken place during the development of the legislation with industry, unions and State and Territory Governments - each of which is represented on NOHSC. Consultations have also been held with environmental groups.

Under the Bill new industrial chemicals will be assessed prior to their introduction and existing chemicals of concern will be assessed on a priority basis. Chemicals used solely for agricultural and veterinary purposes are the subject of existing legislation and are excluded from the Bill.

The Australian Inventory of Chemical Substances will be an integral part of the scheme. It distinguishes existing chemicals which will be selectively notified and assessed from new chemicals which will be subject to mandatory notification and assessment. Each notification to NOHSC will be required to be accompanied by sufficient information on the chemical's use and properties to enable a proper assessment. An assessment report will be produced and made available summarising the assessment and recommending controls and precautions. NOHSC will perform the primary toxicological assessments and the occupational health assessment. The Department of the Arts, Sport, the Environment, Tourism and Territories (DASETT) and the Department of Community Services and Health (DCSH) will contribute assessments in the areas of environmental and public health hazards respectively.

To minimise duplication the Minister may declare an equivalent State and Territory notification law sufficient for the purposes of this Bill and approve overseas notification and assessment schemes providing they are at least equivalent and relevant to Australia.

The Scheme does not impose controls on chemicals. Implementation of recommended control measures will be via existing (principally State and Territory) legislation covering chemicals management. Enforcement will be through co-operative arrangements between the Commonwealth and the States and Territories. Arrangements can be made for State and Territory inspectors to act as inspectors under this Bill.

Decisions made under this Bill will be reviewable by the Administrative Appeals Tribunal on application by importers and manufacturers of chemicals or by other parties.

FINANCIAL IMPACT STATEMENT

Administration of the Act is estimated to cost \$1.25 million per annum after 50% cost recovery. The major cost is that of additional staff for administration and conduct of assessments.

NOTES ON INDIVIDUAL CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. This clause provides for the Bill to be cited as the Industrial Chemicals (Notification and Assessment) Bill 1989.

Clause 2 - Commencement

2. Clauses 1 and 2 will commence on the day the Bill receives Royal assent. The remaining provisions of the Bill will come into effect on a day or days to be fixed by proclamation. If this does not occur, the clause provides that the legislation will be implemented on the first day after the end of the six months period after receiving Royal Assent.

Clause 3 - Object of Act

3. This clause describes the objectives to be met through the operation of the Bill. They are:
  - (a) finding out the risks to occupational health and safety, to public health and to the environment, associated with the import, manufacture and use of the chemicals ;
  - (b) providing information and making recommendations to those Commonwealth, State and Territory authorities involved in the regulation of industrial chemicals;
  - (c) giving effect to obligations that Australia has under international agreements in relation to the regulation of chemicals; and
  - (d) collecting statistics in relation to the chemicals.

Clause 4 - Additional Operation of Act

4. This clause defines the extent of operation of the Bill as it applies to industrial chemicals introduced by way of manufacture in Australia.

Clause 5 - Interpretation

5. This clause defines a range of terms used in the Bill.



Clause 6 - Meaning of chemical

Clause 7 - Meaning of industrial chemical

6. These clauses define those chemicals which are considered industrial chemicals for the purposes of this Bill. Articles, mixtures and chemicals covered by other regulatory mechanisms, such as therapeutic chemicals and agricultural and veterinary chemicals, are excluded from the Bill.

Clause 8 - Application of Act

7. This clause provides that the Bill is to extend to the external territories.

Clause 9 - Act to bind Crown

8. This clause provides that the provision of the Bill will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island, though they will not render the Crown liable to prosecution.

Clause 10 - Relationship to other Commonwealth laws etc.

9. This clause indicates that the Bill is not intended to affect in any way the requirements of any other Commonwealth law.

PART 2 - AUSTRALIAN INVENTORY OF CHEMICAL SUBSTANCES

*Division 1 - Keeping of Inventory*

Clause 11 - Inventory

10. The establishment of an inventory of existing chemicals is essential to the operation of clause 21 to allow identification of new industrial chemicals.

Clause 12 - Content of Inventory

11. This clause establishes that the Inventory will consist of two sections. Chemicals will be included in either the non-confidential or the confidential section. Naturally occurring chemicals, such as crude oil, are taken to be included in the Inventory because their individual listing would be time consuming and serve no practical purpose.

Clause 13 - Inclusion of chemicals the subject of submissions not finalised

12. Compilation of the initial Inventory has been proceeding prior to introduction of this Bill to facilitate implementation of notification provisions. Not all the nominations to include a chemical on the Inventory may have been processed at the

commencement of the provisions of the Bill. This clause enables the processing of such nominations to continue once the Bill is operational.

Clause 14 - Inclusion of new industrial chemical in Inventory after 5 years

13. New industrial chemicals will not be listed in the Inventory for five (5) years after the giving of an assessment certificate under clause 39. Subsequent introducers of these chemicals will thereby be prevented, for this five (5) year period, from receiving the benefit of the investment made by the initial introducer of the chemical in satisfying the provisions of the legislation. Chemicals may be added to the confidential section of the Inventory under paragraph 12(4)(c).

Clause 15 - Inventory to be publicly available

14. This clause ensures public access to the non-confidential section of the Inventory.

*Division 2 - Confidential section*

Clause 16 - Confidential section

15. This clause provides for the confidential section of the Inventory not to be made publicly available.

Clause 17 - Holder of a confidence

16. This clause establishes the status of those who are granted the listing of a chemical in the confidential section of the Inventory.

Clause 18 - Effect of inclusion in confidential section

17. This clause defines the duties of officers with access to the confidential section of the Inventory.

Clause 19 - Transfer of industrial chemical from confidential section

18. Chemicals defined as confidential chemicals under subclause 12(1) or included in the confidential section of the Inventory under paragraph 13(2)(c) must be transferred to the non-confidential section of the Inventory at the end of three years from the commencement of the provisions of this Bill unless the holder of a confidence satisfies the Director that the chemical should not be transferred. If the Director is so satisfied, the chemical may remain in the confidential section for a further three years and must then be transferred to the non-confidential section of the Inventory.

Chemicals which are added to the Inventory five years after the giving of an assessment certificate may, on application,



be included in the confidential section of the Inventory for a period of three years, which may be extended for a further three year period. The provisions of clause 75 relating to exempt information protect the identity of the chemical from publication under subclause 38(5) and clause 74 during the five year period before the chemical is included in the Inventory.

*Division 3 - Correction of Inventory*

Clause 20 - Correction of Inventory

19. This clause allows the Director of Chemicals Notification and Assessment to correct errors in the Inventory.

PART 3 - NOTIFICATION AND ASSESSMENT OF INDUSTRIAL CHEMICALS

*Division 1 - New Industrial Chemicals to be Assessed*

Clause 21 - Introduction of new industrial chemicals

20. This clause provides that an industrial chemical which is not included in the Inventory must not be manufactured or imported unless the introducer has obtained an assessment certificate for that chemical. Various types of chemicals as (defined in clause 5) are excluded, for example
- . chemicals which are introduced solely for use as an agricultural, veterinary or therapeutic chemical;
  - . chemicals to be used or manufactured in small quantities for research, development or analysis;
  - . incidentally produced chemicals (information on impurities and by products introduced as a result of the manufacture or import of a new chemical may be required as part of the information required for the notification of that chemical); and
  - . reaction intermediates because of their transient existence.

Research and development chemicals and incidentally produced chemicals may be the subject of action under clauses 48 and 51.

Circumstances whereby a chemical may be introduced, under the provisions of clause 22 or clause 30, before a certificate is obtained are specified.

*Division 2 - Notification procedures before Assessment*

Clause 22 - Arranged introductions of new chemical may continue

21. When the provisions Bill commence it is likely that a number of chemicals will be in the process of being introduced. This clause sets out procedures to allow the introduction to continue for a specified period in order to allow time for the introducer to comply with the requirements of the Bill or discontinue introduction in an orderly manner.

Clause 23 - Application for assessment certificate

22. This clause provides that an application for an assessment certificate must be accompanied by items of technical information (a "notification statement") to enable the risk (if any) of adverse health, safety or environmental effects to be assessed. The information required is specified in a Schedule to the Bill. Lesser amounts of information are specified for certain classes of chemicals. In addition to the specified information items the applicant must also provide any relevant additional information.

Clause 24 - Variation of requirements of section 23

23. This clause allows variation of the information required in a notification statement under circumstances where it may be either scientifically meaningless or impracticable for the introducer of a chemical to provide certain items of information specified in the Schedule. Special provisions will apply in the case of chemicals which are new to Australia but have been marketed in other countries for some time and are on recognised overseas Inventories. In these circumstances, the cost of generating this data may not be justifiable in view of the potential economic return on the chemical in Australia.

Clause 25 - Exempt information about new industrial chemical

24. This clause allows the applicant to request that certain information in a notification statement be treated as confidential.

Clause 26 - Withdrawal of application

25. An applicant may withdraw at any stage of the assessment before the publication of the report about the chemical. This clause establishes procedures for the return of the application and for the protection of the information provided in the withdrawn submission.



Clause 27 - Director may require further information

26. In certain cases it may become apparent upon closer examination that the notification statement does not contain all the information required in the Schedule. In addition, there may be the need to obtain clarification. In these cases this clause allows the Director to seek the full information. It will also be necessary from time to time to have information additional to the level specified in the Schedule to be able to perform an adequate assessment. This may occur, for instance, where prolonged exposure to a chemical is likely and short term or screening toxicity tests point to possible longer term effects.

Clause 28 - Applicants to give further information

27. If further information relevant to the assessment comes to the attention of the applicant while the chemical is undergoing assessment and before the process is completed the applicant must provide this so that it can be considered in the assessment. Failure to do so may lead to suspension of consideration of the application.

Clause 29 - Further exempt information

28. The applicant will be able to apply for some or all of the information supplied under clauses 27 and 28 to be treated as confidential.

Clause 30 - Permits allowing introduction before assessment complete

29. In exceptional circumstances, it may be necessary to allow introduction of an industrial chemical before the issue of an assessment certificate, for example, the import of a new chemical for the combatting of a major oil spill. This clause sets out conditions under which the Minister may grant permits to allow such introductions.

*Division 3 - Assessment and Report*Clause 31 - Assessment of chemical

30. These clauses provide for the assessment of the potential risk to health, safety and the environment of a new chemical within a 90 day period from when all the information required in the notification statement under clause 23 or required under subclauses 27(1) or 27(2) is received. Circumstances under which this period may be extended by a further 90 days are defined under clause 31.

Clause 32 - Nature of assessment

31. This clause sets out matters to be considered in the assessment.

Clause 33 - Contents of assessment report

32. This clause provides for the content of an assessment report including recommendations for any necessary controls to be placed on any stage of a chemical's life-cycle, such as recommendations to control exposure in the workplace or acceptable disposal methods. It is a matter for the States and Territories which regulate industrial chemicals to pursue these recommendations. Copies of assessment reports will be disseminated to the States and Territories through the provisions of sub clause 38(5).

Clause 34 - Full public reportClause 35 - Summary report

33. These two clauses provide for the preparation of two public versions of the assessment report in which all information which has been granted exempt status has been deleted. The reports are to be disseminated according to clause 38. The summary report will contain the basic information (defined in clause 5) which must be publicly available. This basic information conforms to the OECD list of non-confidential data and covers such things as data relating to the health or environmental effects of the chemical.

Clause 36 - Notice to applicant on completion of report

34. On completion, but before publication, the applicant will have the opportunity to review the assessment reports in order to be able to apply for a variation of the contents of these reports under clause 37 or to withdraw the application under clause 26.

Clause 37 - Application for variation of assessment report

35. This clause allows the applicant to seek to vary the assessment report, including the conclusions, and requires the Director to consider applications for variation in a timely manner. In certain circumstances (where the assessment report recommends that the introduction of a chemical be subject to certain conditions and restrictions) the applicant may form the view that it is not in his/her interest to proceed with the introduction and withdraw the application for an assessment certificate in accordance with clause 26.



Clause 38 - Publication of report

36. This clause provides for the dissemination of the assessment report, for example, to interested Commonwealth, State and Territory agencies once the conditions for clauses 36 and 37 have been met. Arrangements with State and Territory authorities will need to be in place to maintain confidentiality of exempt information contained in the report. The summary report will also be published in the Chemical Gazette (see clause 107).

Clause 39 - Giving of assessment certificates

37. Under this clause the assessment certificate must be issued within seven (7) days of the dissemination of the assessment reports under subclause 38(5). The clause also sets out the details to be contained on the certificate.

Clause 40 - Application for variation of full public report

38. Third parties will have a chance to apply for a variation of the assessment report after publication, as will the applicant. This clause sets out the steps to be taken by the Director in considering a request for variation of the report and defines that all levels of assessment report must be amended similarly.

*Division 4 - Effect of Other Notification Schemes*Clause 41 - Approved State and Territory notification procedures

39. Some States and Territories may elect to enact equivalent notification and assessment provisions by way of their powers over the manufacture of chemicals. Agreements will be entered into in these cases to ensure that there is no duplication of notification and assessment activities. In some circumstances of manufacture (for example, a chemical intermediate which will be confined to that State) it may be appropriate that notification be at the State level. This clause provides that such notifications which have satisfied the State authority shall be taken as a satisfactory notification statement for the purpose of this Bill.

Clause 42 - Exempt information given under section 41

40. The applicant will be able to apply for some or all of the information supplied under clause 41 to be treated as confidential.



Clause 43 - Approved foreign scheme

Clause 44 - Chemical notified and assessed under approved foreign scheme

41. This Bill establishes requirements for notification and assessment in accordance with a number of OECD agreed principles. In view of Australia's position as a country which imports the large majority of its industrial chemicals, many of the chemicals new to Australia will already have satisfied the requirements of similar notification schemes in other countries. These clauses provide for the minimisation of unnecessary duplication in Australia by the nomination of overseas schemes, of at least equivalent standard to the Australian scheme, and by the utilisation of overseas assessments made under these schemes wherever the assessment is adequate and applicable to the proposed circumstances of use in Australia.

Clause 45 - Exempt information given under section 44

42. The applicant will be able to apply for some or all of the information supplied under clause 44 to be treated as confidential.

Clause 46 - Interim Notification Scheme

43. A voluntary interim notification scheme for new industrial chemicals has been operating under the auspices of the Australian and New Zealand Environment Council since 1981. This clause provides that chemicals which have satisfied the similar requirements of that scheme, but which are new chemicals for the purposes of this Bill, do not have to be the subject of an application for a certificate under this Bill.

*Division 5 - Assessment of Industrial Chemicals and certain New Industrial Chemicals*

Clause 47 - Application of Division

44. This clause provides that chemical which are listed on the Inventory or naturally occurring chemicals which are deemed to the listed on the Inventory (subclause 12(5)) may be treated as priority existing chemicals. The clause also recognises that concerns could arise about chemicals which are not on the Inventory and which, under clause 21, do not require an assessment certificate. This clause enables such chemicals to be subject to the provisions relating to priority existing chemicals. These chemicals are:

- . incidentally-produced chemicals;

- . research development or analysis chemicals imported in quantities under 50 kg per annum; and
- . new industrial chemicals exempted because they are similar to assessed chemicals.

Clause 48 - Recommendation of declaration of priority existing chemical

45. The Bill provides for the notification and assessment of existing chemicals of priority concern. This clause sets out the grounds on which the Director may recommend to the Minister that a chemical be declared a priority existing chemical.

Clause 49 - Steps before making recommendation

46. This clause provides for the acquisition of information to assist in determining whether a particular chemical or class of chemicals should be declared a priority existing chemical. Information requested may include uses of the chemical and the volume manufactured or imported.

Clause 50 - Exempt information supplied under section 49

47. Persons who provide information under clause 49 will be able to apply for some or all of the information supplied to be treated as confidential.

Clause 51 - Recommended declaration of priority existing chemicals

48. This clause provides for chemicals to be declared as priority existing chemicals. The declaration may be limited in its scope focusing on particular uses or hazards of the chemical. The declaration imposes obligations on current and future manufacturers and importers of priority existing chemicals, as provided for in clauses 55, 56, 58 and 61.

Clause 52 - Declaration of chemicals wrongly included in Inventory

49. Chemicals wrongly included in the Inventory must be declared as priority existing chemicals. This provision differs from the ability of the Director to amend errors under clause 20 which relates merely to simple error. Removal from the Inventory is not considered feasible since other users may have introduced the chemical in good faith.

Clause 53 - Notices of priority existing chemical to indicate extent of assessment

50. This clause requires that at the same time as a declaration of a priority existing chemical is made, the information needed to enable the Director to conduct the assessment of the chemical should be identified.



Clause 54 - List of priority existing chemicals

51. A list of priority existing chemicals declared under clause 51 or 52 must be kept and be publicly available.

Clause 55 - Applications for assessment of priority existing chemicals

52. This clause differentiates between a timely application for an assessment of a priority existing chemical and a late application. The distinction is based on the 28 day period after which the Director has the discretion to initiate an assessment under subclause 57(2).

Clause 56 - Introduction of priority existing chemicals

53. Once a priority existing chemical has been declared, persons who import or manufacture the chemical will not be able to continue unless they have applied for an assessment of the chemical, including the payment of the appropriate fee. This mechanism has been introduced to enable cost recovery for the assessment of these chemicals.

Clause 57 - Assessment of priority existing chemical

54. When an application for the assessment of a priority existing chemical has been received, a report must be prepared and disseminated as described for new chemicals in clauses 34-40. The report may focus on those aspects which caused the declaration under clause 51. The applicant does not have the opportunity to withdraw the application as the chemical may still be being sold or used or present in the environment. For the same reasons, if an application is not received the Director, after 28 days but within 12 months of the declaration, may still cause an assessment report to be prepared.

Clause 58 - Obtaining information for assessment

55. This clause provides for the provision of information on chemicals declared under clause 51 or 52 and may, for the reasons specified above, also apply to persons who have introduced the chemical in the past but will not do so in the future. It reflects the differing requirements for assessment of a priority existing chemical; principally, that such an assessment may focus on specific concerns and may require different data. For example, if testing in another country indicates that a chemical has reproductive toxicity, detailed information about the exposure to workers and possible means of reducing or eliminating any exposure might be required. The generation and provision of information may be made on a collective basis.



Clause 59 - Time for compliance with varied notice

56. Subsequent to information on a chemical being required by notice under clause 58, it may become apparent that additional information is necessary to adequately establish the risk of the chemical. If the Director seeks additional information, he must give the recipients adequate time to respond.

Clause 60 - Exempt information about priority existing chemical.

57. Persons who provide information under clause 58 will be able to apply for some or all of the information supplied to be treated as confidential.

Clause 61 - Prohibition of priority existing chemical until assessment complete.

58. In exceptional circumstances, a chemical may be suspected of presenting an unacceptable health, safety or environmental risk. This clause provides that, in these circumstances further activity involving a chemical may be prohibited pending a full assessment. Such a prohibition would only apply while the chemical is being assessed and any subsequent restriction of the chemical would be through other Commonwealth and State legislation.

Clause 62 - Publication of report revokes declaration.

59. A chemical ceases to be a priority existing chemical once the assessment report is published.

Clause 63 - Removal of priority existing chemical from Inventory

60. This clause allows for removal of the priority existing chemical from the Inventory if no application for the assessment of the priority existing chemical is received within 12 months of its declaration and if the Director has not chosen to initiate an assessment under subclause 57(2). Under these circumstances it may be assumed that it is no longer being imported or manufactured in Australia. Removal from the Inventory will ensure that the chemical, about which concern has been expressed, will be assessed under the new chemical provisions of the Bill should it be re-introduced in the future.

*Division 6 - Secondary Notification after Assessment*

Clause 64 - Introducer to notify Director of certain matters

61. An assessment report may set out circumstances whereby secondary notification of the chemical is required to reassess the risks to health safety and the environment. This clause requires an introducer to inform the Director should such circumstances arise.

Similarly, an introducer is required to inform the Director:

- . when the circumstances of introduction change significantly from those for which it was assessed, or
- . when new information indicates that the hazard may vary from that expected at the time of assessment

irrespective of whether the assessment report includes a secondary notification requirement.

Clause 65 - Secondary notification

62. Where circumstances require secondary notification, or otherwise at his discretion, the Director, through the Chemical Gazette, is to formally require the secondary notification and at the same time specify the information to be provided.

Clause 66 - Exempt information about chemicals subject to secondary notification.

63. Persons who provide information under clause 65 will be able to apply for some or all of the information supplied to be treated as confidential.

Clause 67 - Failure to comply with secondary notification requirements.

64. This clause provides for the suspension of manufacture or import where persons fail to comply with clauses 64 and 65, until such time as they comply.

Clause 68 - Assessment of chemical of which secondary notification required.

65. Where a secondary notification has been given, an assessment report must be prepared and disseminated as for new chemicals in clauses 34-38 and 40. The report may focus on those aspects which caused the secondary notification under clause 65. The notifier does not have the opportunity to withdraw from a secondary notification as the chemical may still be being sold, used or present in the environment. For the same reasons, if a secondary notification is not given, a report may still be prepared at the Director's discretion.

Clause 69 - Obtaining information for purposes of assessment

66. This clause enables the Director to obtain information, for the assessment of a chemical for which secondary notification is required under clause 65, from introducers of the chemical who are not required to give secondary notification. For example, secondary notification may only be required for particular uses. Introducers for other uses may, however, have information that would assist in the assessment.



Clause 70 - Variation of assessment certificate on secondary notification.

67. An assessment certificate for a new industrial chemical will be amended to indicate that an assessment has been carried out following a secondary notification.

Clause 71 - List of chemicals requiring secondary notification

68. Lists of chemicals requiring secondary notification, either as a result of a recommendation in the original assessment reports or because of a requirement under clause 65 and of chemicals which no longer require secondary notification under clause 72, must be kept and be publicly available.

Clause 72 - Revocation of requirement for secondary notification

69. This clause allows the Director to declare that a secondary notification of a chemical is no longer required because, for example, a further assessment has been carried out under this Division.

*Division 7 - Assessment Certificates*

Clause 73 - Transfer of assessment certificates.

70. This clause allows the transfer of assessment certificates on death, bankruptcy, the winding up of a company or the disposal of a business and identifies the new certificate holder. This provisions also specifies that the Director may revoke a certificate where a person has not notified the Director of the transfer of the certificate.

Clause 74 - Record of assessment certificates.

71. A list of chemicals for which assessment certificates have been issued under clause 39 must be kept and the non confidential portion of this list must be publicly available.

*Division 8 - Confidentiality*

Clause 75 - Exempt information

72. This clause provides for the protection of confidentiality where a request is made and where the prejudice to the financial interests of the applicant which would be caused by the disclosure outweighs the public interest in publication. A set of basic information (defined in clause 5) cannot be kept confidential. This basic information corresponds to the OECD list of non-confidential data .



Clause 76 - Confidentiality by Director etc.

73. This clause describes restrictions on the disclosure of confidential information.

*Division 9 - Access to Assessment information*

Clause 77 - Notification of introduction

74. A person will have to give prompt notice (within 7 days) of the first introduction of a chemical which has been the subject of an assessment certificate.

Clause 78 - Full public report etc. to be available.

75. This clause ensures that the full public assessment report will be freely available to the public for chemicals which have been introduced and for which a summary assessment report has been published. For chemicals for which an assessment certificate has been issued on the basis of an assessment under the Interim Notification Scheme, the Material Safety Data Sheet will be available instead of a full public assessment report. This is to avoid imposing retrospective requirements for publication of data on those who applied under the Interim Notification Scheme.

Clause 79 - Disclosure of exempt information in certain circumstances.

76. This clause defines the special circumstances under which the Director may disclose confidential information and includes provisions for disclosure in emergencies.

Clause 80 - Notice of disclosure of information

77. This clause provides for the procedures to be followed by the Director in the event that the provider of the confidential information does not agree with the Director's decision that it should be disclosed under clause 79.

PART 4 - ENFORCEMENT

*Division 1 - Offences and Injunctions*

Clause 81 - False or misleading information

78. This clause describes the penalty for provision of false or misleading information in relation to any requirement of this Bill.

Clause 82 - Knowledge of chemical to which charge relates.

79. This clause clarifies that a person cannot use as a defence that they were unaware of being in contravention of the provisions of this Bill that relate to the introduction of the chemical if they ought reasonably have known.

Clause 83 - Injunctions

80. This clause makes provision to enable the Federal Court, on the application of the Minister or any other person, to grant injunctions and interim injunctions to restrain persons from manufacturing or importing in contravention of the provisions of the Bill or by behaviour such that the Minister believes that they are proposing to contravene the provisions of the Bill.

*Division 2 - Inspectors*

Clause 84 - Appointment of inspectors

81. This clause allows the Director to appoint inspectors and permits arrangements to be made for inspectors from a State or Territory to perform the function of inspectors.

Clause 85 - Identity cards

82. Inspectors must be issued with identity cards which must be returned as soon as practicable if he/she ceases to become an inspector.

Clause 86 - Searches to monitor compliance with Act etc.

83. Under this clause inspectors may, either with the consent of the occupier or under a warrant issued by the Magistrate, enter premises to search for and retain information relating to compliance with the provisions of this Bill. The clause also details conditions under which a warrant may be issued and what the warrant must state.

Clause 87 - Offence-related searches and seizures

84. Where an inspector believes premises may contain evidence relating to an offence under the provisions of this Bill, he may either with the consent of the occupier or under a warrant issued by a Magistrate, search the premises for the evidence and seize it for a defined period, if found. The clause also details conditions under which a warrant may be issued and what the warrant must state.



Clause 88 - Power to require information and documents

85. On production of the identity card by an Inspector, a person must provide information to the inspector in relation to whether the Bill has been complied with unless it might tend to incriminate them.

Clause 89 - Exempt information given to inspectors

86. This clause allows persons to apply for information obtained under clauses 86 and 87 or provided under clause 88 to be treated as confidential.

PART 5 - ADMINISTRATION

Clause 90 - Director

87. This clause establishes the position and office of Director of Chemicals Notification and Assessment. The Director is to be appointed by the Governor-General.

Clause 92 - Functions of Director

88. This clause sets out the duties of the Director and clarifies that he/she operates under the direction of the Chief Executive Officer of the National Occupational Health and Safety Commission.

Clause 92 - Terms and conditions of appointment of Director

89. The Director may hold office for up to 5 years, but not past the age of 65, on terms and conditions provided for by this Bill or as determined by the Minister.

Clause 93 - Remuneration of Director

Clause 94 - Leave of absence of Director

90. These clauses provide for the conditions of employment of the Director.

Clause 95 - Resignation of Director

Clause 96 - Termination of appointment of Director

91. These clauses provide for the conditions as to how the Director may resign or have his/her appointment terminated by the Governor General.

Clause 97 - Acting Director

92. In the Director's absence, or when the position is vacant, the Minister may appoint an acting Director for a period of not more than 12 months.



Clause 98 - Disclosure of interests of Director

93. The Director must disclose to the Minister any business interests that he/she may have.

Clause 99 - Arrangements relating to staff of the Commission

94. This clause provides for resources from within the National Occupational Health and Safety Commission to be made available to the Director to conduct assessments or to assist with administration under this Bill.

Clause 100 - Arrangements relating to staff of Departments

95. Assessment of public health and environmental aspects of submissions will be conducted by officers of the Department of Community Services and Health and the Department of the Arts, Sport, the Environment, Tourism and Territories respectively. This clause provides for arrangements for resources to be made available to the Director from these Departments to conduct assessments.

PART 6 - MISCELLANEOUS

Clause 101 - Legal proceedings not to lie

96. This clause protects the Commonwealth or an individual officer from legal action arising from damage or loss because of reliance upon an assessment or an assessment report.

Clause 102 - Applications for review

97. (1) The following matters are appellable to the Administrative Appeals Tribunal:

(a)

- . a decision by the Minister under subclause 30(1) on granting a permit that a chemical may be imported before the assessment certificate is granted.
- . a decision by the Minister under subclause 30(3) on particulars to be published about a chemical imported prior to the granting of an assessment certificate in the Chemical Gazette.
- . conditions specified by the Minister under subclause 30(5) in permits allowing the introduction of a chemical before an assessment certificate is given.
- . a decision by the Minister under subclause 31(3) to grant an additional 90 days in which to complete an assessment and report.

- . a decision by the Minister under sub clause 44(5) to grant an additional 90 days to complete an assessment report.
- . a declaration by the Minister of a priority existing chemical under subclause 51(1).
- . a decision by the Minister under subclause 57(5) on extending the period for completion of an assessment report for a priority existing chemical
- . a decision by the Minister under subclause 61(2) on prohibiting continuing activity involving a declared priority existing chemical.
- . a direction by the Minister under subclause 67(1) on suspension of an assessment certificate or introduction permit to prohibit continuing introduction of a chemical due to the failure to comply with a secondary notification requirement.

or (b)

- . a decision by the Director under subclause 13(2) on whether a chemical will be included in the confidential section of the Inventory.
- . a decision by the Director under subclause 14(4) on inclusion of a chemical in the confidential section of the Inventory five years after the giving of an assessment certificate.
- . a decision by the Director under subclause 17(4) on whether to treat an applicant as the holder of a confidence about a chemical.
- . a decision by the Director under subclause 19(8) to reject a person's reasons that a chemical should not be transferred from the confidential to the non-confidential section of the Inventory.
- . a decision by the Director under clause 22 on allowing the continuing introduction of a chemical which had been arranged before the Bill came into being.
- . a decision by the Director under subclause 24(1) on waiving the requirements of the notification statement in the case of chemicals listed in a prescribed international inventory of chemicals.
- . a decision by the Director under subclause 24(3) on varying an information requirement from that in the schedule.
- . a decision by the Director under subclause 24(4) on waiving the requirements of the notification



statement where particular matters are irrelevant, or unnecessary, for the assessment of the chemical.

- . a decision by the Director under subclause 27(1) to request further information about a matter related to a requirement in the Schedule.
- . a decision by the Director under subclause 27(2) to request further information about a matter needed to complete an assessment which is additional to the requirements in the Schedule.
- . a decision by the Director under subclause 27(4) on whether an applicant cannot obtain requested information and should be taken to have complied with a notice for the purpose of subclause 31(2).
- . a decision by the Director under subclause 28(2) to suspend consideration of the application until the applicant supplies further information required to be submitted under subclause 28(1).
- . a decision by the Director under paragraph 37(2)(b) refuse to vary an assessment report as requested.
- . a decision by the Director under subclause 40(6) on varying a full public report as requested.
- . a decision by the Director paragraph 44(1)(b) on whether the assessment under an approved overseas scheme is relevant to Australia.
- . a decision by the Director under paragraph 44(2)(b) on adoption of an overseas assessment report.
- . a decision by the Director under clause 52 that a chemical was wrongly included on the Inventory.
- . a decision by the Director under subclause 58(3) concerning information requirements for a priority existing chemical.
- . a decision by the Director under subclause 65(2) to require a secondary notification.
- . the requirement by the Director under subclause 69(1) for persons who are not required to give a secondary notification of a chemical to supply information.
- . a decision by the Director under subclause 73(6) to revoke an assessment certificate due to not being informed of a change in the holder of the certificate.
- . a decision by the Director under subclause 75(1) on allowing information to be treated as exempt.

- . a decision by the Director under subclause 75(1) on allowing information to be treated as exempt.
- . a decision by the Director under paragraph 79(a) on disclosing exempt information in the public interest.

Clause 103 - Statement to accompany notice of decisions.

98. The right of review by the Administrative Appeals Tribunal is to be explicitly noted in all decisions covered in clause 102. The applicant is also able to apply for written reasons as to why a particular decision was taken.

Clause 104 - Delegation by Minister

99. The Minister may delegate to specified persons all or any of his powers under this Bill except for:
- . the power to allow introduction of a chemical prior to the granting of an assessment certificate under clause 30.
  - . the power to declare that a notification law of a State or Territory is sufficient for the purposes of this Bill under clause 41.
  - . the power to approve a specified foreign scheme for the purposes of this Bill under clause 43.
  - . the power to prohibit an activity involving a priority existing chemical under subclause 61(2).
  - . the power to suspend an assessment certificate or prohibit the import or manufacture of a chemical by a person under subclause 67(1).
  - . the power to apply for injunctions under clause 83.
  - . the power to vary the Schedule under clause 105.

Clause 105 - Variation of Schedule

100. This clause provides for the Minister to amend the Schedule through publication in the Chemical Gazette and that such amendments be readily accessible to the public. Any such amendments may be disallowed by the Parliament pursuant to section 46A of the *Acts Interpretation Act 1901*.

Clause 106 - International obligations on movement of industrial chemicals out of Australia

101. This clause sets up procedures for publication in the Chemical Gazette and notification to recipient countries of chemicals of which Australia is required, by international agreement is required, to notify the export from Australia.



Clause 107 - Chemical Gazette

102. Persons potentially affected by many of the decisions made under this Bill will need to be informed, for example, of the declaration of a priority existing chemical, so that they can respond appropriately. A special issue of the Gazette, to be known as the Chemical Gazette will be issued on a monthly basis. It is intended that all notices and matters relating to this Bill will be published in this Gazette. This clause ensures that this Gazette should be readily available to the public.

Clause 108 - Annual Report

103. The Director must provide to the Minister on an annual basis a report on the operation of the Bill during that financial year. Following its receipt by the Minister, this report must be tabled in each House of the Parliament within a specified period.

Clause 109 - Conduct by directors, servants or agents.

104. For the purposes of this Bill, conduct engaged in, on behalf of a body corporate, by directors, servants or agents shall be deemed to be conduct engaged in by the body corporate. Conduct engaged in, on behalf of a person, by servants or agents, shall be deemed to be conduct engaged in by that person.

Clause 110 - Fees

105. This clause provides that Regulations may prescribe fees or a method of ascertaining fees in respect of the items listed in subclause 110(1).

Clause 111 - Regulations

106. This clause authorises the making of Regulations to give effect to the provisions of the Bill.

SCHEDULE

107. The schedule sets out information to be provided in the notification statement which must accompany applications on the assessment certificate for a new chemical.