

## EXPLANATORY STATEMENT

Issued under the authority of the Minister for Regional Health, Regional  
Communications and Local Government

*Industrial Chemicals Act 2019*

*Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act  
2019*

*Industrial Chemicals (Fees and Charges) Legislation Amendment  
(2021 Measures No. 1) Rules 2021*

### Authority

The *Industrial Chemicals Act 2019* (the Act) establishes the Australian Industrial Chemicals Introduction Scheme (AICIS), a national regulatory framework for the introduction (importation or manufacture) of industrial chemicals. This scheme replaced the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) on 1 July 2020.

Section 180 of the Act provides that the Minister may make rules prescribing matters required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act. Paragraph 167(1)(f) of the Act provides that the rules may prescribe fees for applications made under the Act, or prescribe a method for working out a fee for an application under the Act. Subsection 170(1) of the Act provides that the rules may prescribe circumstances in which the Executive Director of AICIS may refund or waive fees payable under the Act. Paragraph 22(b) of the Act enables the rules to provide for other matters relating to the collection and recovery of registration charge, including the refund of overpayments of registration charge.

Section 50 of the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act 2019* (the Transitional Act) provides that the Minister may make rules providing for matters required or permitted by the Transitional Act, or necessary or convenient in order to carry out or give effect to the Transitional Act. The rules may also prescribe matters of a transitional nature (including savings and application provisions).

### Purpose

It is government policy that the full costs of AICIS activities are recovered from the regulated industry through fees for services and charges.

The Amending Rules make a number of amendments to the amounts prescribed by the *Industrial Chemicals (Fees and Charges) Rules 2020* (Fees and Charges Rules)

for the different kinds of applications under the Act, and introduce new application fees and time limiting of overpayments of the registration charge paid under the Act.

In addition, the Amending Rules create a new Part in the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Rules 2019* relevant to time limiting the refund of overpayments of the registration charge paid under the former *Industrial Chemicals (Notification and Assessment) Act 1989* (the ICNA Act).

## Background

The policy authority to fully cost recover the activities of industrial chemical regulation was provided for in the 1994-95 Budget under the measure “Implementing full cost recovery in 1996–97 for National Industrial Chemicals Notification and Assessment Scheme”.

On 26 May 2015, the Australian Government announced its decision to implement a range of reforms to the regulation of industrial chemicals. These reforms were implemented through the establishment of AICIS, which replaced NICNAS on 1 July 2020.

The establishment of AICIS did not change the Government’s policy position that the full cost of regulatory activities continue to be recovered through fees and charges paid by regulated entities (introducers of industrial chemicals). Full cost recovery continues to be applied and is considered appropriate because introducers continue to create the need for industrial chemicals in the marketplace to be regulated.

## Details

Details of the Amending Rules are set out in Attachment A.

## Consultation

A Cost Recovery Implementation Statement to determine AICIS fees and charges for the financial year 2021-22 was developed in accordance with the Australian Government Charging Framework (AGCF) and Australian Government Cost Recovery Guidelines (AGCRGs).

In April/May 2021 all stakeholders were invited to respond to the draft AICIS Cost Recovery Implementation Statement (CRIS) 2021-22. Three submissions were received from industry stakeholders, including an industry association.

The proposed amendments to fees strike a balance between stakeholder views and the resources required to fund the scheme.

The Amending Rules commence on 1 July 2021.

The Amending Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights is at Attachment B.

**Details of the *Industrial Chemicals (Fees and Charges) Legislation Amendment (2021 Measures No. 1) Rules 2021***

**1 Name of the Instrument**

Section 1 states that the name of the instrument is the *Industrial Chemicals (Fees and Charges) Legislation Amendment (2021 Measures No. 1) Rules 2021*.

**2 Commencement**

Section 2 states that the instrument commences on 1 July 2021.

**3 Authority**

Section 3 states that the instrument is made under the *Industrial Chemicals Act 2019* (the Act) and the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act 2019* (the Transitional Act).

**4 Schedules**

Section 4 provides that each instrument that is specified in a Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

**5 Schedule 1 – Amendments**

The Amending Rules make routine annual amendments to the amounts of fee prescribed by the *Industrial Chemicals (Fees and Charges) Rules 2020* (Fees and Charges Rules) for the different kinds of applications that can be made under the Act and prescribe additional kinds of applications and related fees. In addition, the Amending Rules introduce a time limit on refunds of overpayments of registration charge paid under the Act.

The Amending Rules also create a new Part in the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Rules 2019* to introduce a consistent time limit on when the refund of overpayments of registration charge paid under the former *Industrial Chemicals (Notification and Assessment) Act 1989* (the ICNA Act) can be made.

*Part 1 – Main amendments*

*Definition of category C country*

Under item 1 of Schedule 1 to the Amending Rules, section 4 of the Fees and Charges Rules is amended to insert the term *category C country*. A *category C country* is defined to mean a country that is not a party to the Rotterdam Convention.

The concept of ‘a country that it not party to the Rotterdam Convention’ was previously included in the *Industrial Chemicals (Notification and Assessment) Regulations 1990* (repealed) (ICNA Regulations) but not reflected in the drafting of the Fees and Charges Rules when the AICIS replaced NICNAS.

Section 74 of the *Industrial Chemicals (General) Rules 2019* (General Rules) requires an application to introduce industrial chemicals mentioned in section 71 or 72, or to export an industrial chemical mentioned in section 73.

This amendment to the Fees and Charges Rules ensures that the appropriate fee for an **application** under section 74 of the General Rules to export to a country that is not a party to the Rotterdam Convention can be included in table item 14 in subsection 5(1) of the Fees and Charges Rules.

The amount of the application fee (\$2,395) is the same as for an application for approval to export to a *category A country*.

#### *Application fees*

Item 2 of Schedule 1 to the Amending Rules replaces the existing table items in subsection 5(1) of the Fees and Charges Rules as part of routine annual changes to the application fees.

The application fees have been adjusted for 2021-22 to align with the efficient cost of providing each service as part of a fee for service model. The amount of each fee has been determined based on costing the effort and resources required for delivery of the service being applied for. In addition, some activities for which the costs were recovered through the levy charge in 2020-21 have been identified as being appropriately charged as fees for services payable by individuals that create the demand for these services consistent with the AGCF.

A total of eight new fees for services, previously incorporated into the levy charge, were identified as the result of a review of the charging arrangements and activities undertaken in the first year of operation of the AICIS.

New fees for services that have been prescribed in subsection 5(1) include, for example:

- applications to add or to remove a person covered by a certificate
- applications to add or remove a certificate holder
- applications to add or remove commercial evaluation certificate holders.

#### *Multi-component introductions*

A new fee for service inserted by the Amending Rules is in relation to multi-component introductions (refer new subsection 5(4)).

Multi-component introductions occur where a person makes two or more applications for an assessment certificate for the introduction of two or more industrial chemicals (component chemicals) under section 31 of the Act at the same time.

The newly inserted subsection 5(5) describes the concept of multi-component introductions as where:

- each component chemical can be uniquely identified; and
- the component chemicals are manufactured (whether in Australia or otherwise) together; and
- the component chemicals are to be introduced into, and used in, Australia together (and not separated during introduction or use); and
- there is no single Chemical Abstracts Service (CAS) name that covers all the component chemicals and only the component chemicals.

The intention of including this type of application in the Fees and Charges Rules is for an applicant to pay reduced fees for a related application made under section 31 of the Act when it is submitted with another application (the first application) where the applications are for multi-component introductions.

#### *Refund of overpayments of registration charge*

Section 22 of the Act enables other matters including the refund of overpayments of registration charge to be set out in the Fees and Charges Rules.

Item 3 of Schedule 1 to the Amending Rules replaces the existing section 6 of the Fees and Charges Rules (for the purposes of paragraph 22(b) of the Act) regarding the refund of overpaid registration charge to include a new rule that limits the time period during which a refund of overpayments of the registration charge is payable under section 20 of the Act can be made.

Under the previous scheme (NICNAS), an application for the refund of overpaid registration charge was limited to an application made within 3 years after the registration year to which the charge relates. Consistent with the previous arrangements, the Amending Rules now consistently include this rule in the AICIS.

Section 6 of the Fees and Charges Rules will only enable an amount of overpaid registration charge to be refunded by the Executive Director if the application by a person for the remission of an amount of registration charge is in writing and is made within 3 years after the end of the registration year to which the charge relates.

This rule is similarly applied for the refund of an overpaid registration charge at the Executive Director's own initiative, such that any overpaid charge to be refunded is an amount that was paid within the previous 3 years after the end of the registration year.

#### *Part 2 - Transitional provisions*

To ensure the effect of time limiting the refund of overpayments of registration charges paid under the old law (the ICNA Act) is the same as under the Act, item 4 of Schedule 1 to the Amending Rules inserts a new Part 15 into the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Rules 2019* (the Transitional Rules).

As for overpaid amounts of registration charge paid under the Act, new section 84 of the Transitional Rules enables an amount of overpaid registration charge to be

refunded by the Executive Director if the application by a person for the remission of an amount of registration charge is in writing and is made within 3 years after the end of the registration year to which the charge relates. The same time limit is also applied on refunds of an overpaid registration charge at the Executive Director's own initiative.

## ATTACHMENT B

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Industrial Chemicals (Fees and Charges) Legislation Amendment (2021 Measures No. 1) Rules 2021***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

The *Industrial Chemicals Act 2019* (the Act) establishes the Australian Industrial Chemicals Introduction Scheme (AICIS), a national regulatory framework for the introduction (importation or manufacture) of industrial chemicals. This scheme replaced the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) on 1 July 2020.

It is government policy that the full costs of AICIS activities are recovered from the regulated industry through fees for services and charges.

The Amending Rules make a number of routine amendments to the amounts prescribed by the *Industrial Chemicals (Fees and Charges) Rules 2020* (Fees and Charges Rules) for the different kinds of applications under the Act, and introduces new application fees and time limiting of overpayments of the registration charge paid under Act.

In addition, the Amending Rules create a new Part in the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Rules 2019* relevant to time limiting the refund of overpayments of the registration charge paid under the former *Industrial Chemicals (Notification and Assessment) Act 1989* (the ICNA Act).

#### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Mark Coulton MP Minister for Regional Health, Regional Communications  
and Local Government**