

# **Industrial Chemicals (Notification and Assessment) Regulations (Amendment) 1995 No. 358**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1995 No. 358**

(issued by the Authority of the Assistant Minister for Industrial Relations)

*Industrial Chemicals (Notification and Assessment) Act 1989*

Industrial Chemicals (Notification and Assessment) Regulations (Amendment)

Section 111 of the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

Section 110 of the Act provides that the regulations may prescribe fees, or a method of calculating fees, to be paid to the Commonwealth in respect of a variety of applications, notifications and other actions under the Act.

Subsection 110(5) of the Act provides that the regulations may prescribe circumstances in which the Director may, on behalf of the Commonwealth, wholly or partly waive or remit fees that would otherwise be payable under section 110.

The regulations ensure that the assessment program for priority existing chemicals (PECs) continues to function by reducing the application fees payable for assessment and provide that the Director may wholly waive the fee payable for an application for the assessment of the chemical 1,4-dioxane.

1,4-dioxane was declared a PEC on 3 May 1994; however, no person has yet applied for its assessment. It appears that its sole use in Australia is for research and analysis and that it is also present in trace amounts in other chemicals. For such users, the assessment fee (up to \$62,500) is too expensive.

No further amounts of 1,4-dioxane can be imported or manufactured unless someone applies for its assessment. This could lead to a shortage of 1,4-dioxane for research and analytical work. The Director may therefore waive the application fees in such cases.

The current fee structure provides for the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) to operate on the basis of 50 per cent cost recovery. The Government endorsed a proposal to move to 100 per cent cost recovery by the financial year 1996/1997.

The move to full cost recovery was the subject of a recent review, the Gwynne Review. This Review recommended a change to the method of funding NICNAS, in particular, the funding of the PEC program. PECs are chemicals the manufacturing, handling, storage, use or disposal of which may give rise to adverse health effects or adverse environmental effects.

One of the findings of the Review was that the current fee structure was unrealistic and presented a significant disincentive to companies to continue to import those chemicals which have been declared PECs. This is impeding the ongoing assessment program. The maximum fee for an application for the assessment of a PEC under the previous regulations was \$62,500.

It is proposed to amend the Act to replace the present application fees for the assessment of PECs with a broad based levy on the importers and manufacturers of industrial chemicals. The Act will require significant amendment to introduce this levy. It is proposed that, in the interim, the assessment fees be reduced to enable the assessment program to continue.

Regulations 12A, 12B and 12C of the Principal Regulations formerly provided for the calculation and payment of fees for applications under subsections 55(1) and (2). Regulation 12A is omitted by subregulation 3.1. A new regulation 12A is also inserted by subregulation 3.1.

Regulation 12A provides that the amount payable on an application under subsection 55(1) of the Act is worked out according to the formula  $n \times \$5,000$  and for a late application under subsection 55(2) of the Act according to the formula  $(n \times \$5,000) + (n \times \$1,000)$  where  $n$  is the number of persons who are party to the application.

Regulation 12B was omitted by subregulation 4.1.

Regulation 12C of the Principal Regulations was omitted by subregulation 5.1 and a new regulation 12C inserted. Regulation 12C provides that the fee payable under section 55 of the Act is payable at the time the application is lodged.

Subregulation 16(1) provides that the Director may waive any fee otherwise payable in respect of the priority existing chemical known as 1,4-dioxane, if the chemical is, or is to be, introduced by the person either solely for the purposes of research, development or analysis in quantity of not more than 50 kilograms in any 12 month period or solely as a by-product.

Subregulation 16(2) provides that subregulation 16(1) ceases to have effect when 1,4dioxane ceases to be a priority existing chemical.

Subregulation 16(3) provides that if the Director has waived a fee under subregulation 16(1) and the person introduces more than 50 kilograms in any 12 month period, that person must, within 28 days of becoming aware of the introduction of the increased quantity, notify the Director in writing of the fact and pay the fee.

Subregulation 16(4) provides it is an offence for a person to knowingly or recklessly failing to comply with the requirement to notify the Director.

The penalty for this offence is 10 penalty units.

Regulation 17 of the Principal Regulations provides that an application may be made to the AAT for review of a decision of the Director under subregulations 15(1) or (4). Regulation 17 includes a reference to new subregulation 16(1).