

Industrial Chemicals (Notification and Assessment) Amendment Regulations 2004 (No. 3) 2004 No. 246

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 246

Issued by the Authority of the Parliamentary Secretary to the Minister for Health and Ageing

Industrial Chemicals (Notification and Assessment) Act 1989

Industrial Chemicals (Notification and Assessment) Amendment Regulations 2004 (No. 3)

Section 111 of the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) provides in part that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The object of the Act is to provide for a national system of notification and assessment of industrial chemicals for the purposes of aiding in the protection of the Australian people and the environment; providing information and making recommendations about industrial chemicals to Commonwealth, State and Territory bodies; giving effect to Australia's obligations under international agreements; and collecting statistics in relation to these chemicals.

The purpose of the Regulations is to amend the *Industrial Chemicals (Notification and Assessment) Regulations 1990* (the Principal Regulations) to reflect changes that were made to the Act by the *Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Act 2004* (the Amendment Act). The Amendment Act made a number of changes to the Act to give effect to Australia's obligations under the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention).

The objective of the Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous pesticide and industrial chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics. The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) will be implementing Australia's obligations under the Convention as they relate to industrial chemicals, except in relation to direct liaison with the Convention Secretariat. International liaison, and in particular, information exchange with the Convention Secretariat and regulatory authorities of other countries that are Parties to the Convention, is the responsibility of the Designated National Authority (DNA). The DNA for industrial chemicals is currently the Department of the Environment and Heritage.

Australia ratified the Convention on 20 May 2004 and the Convention enters into force for Australia on 18 August 2004. As a Party to the Convention, Australia must have legislative or administrative measures in place to implement its obligations under the Convention. These obligations include putting controls in place for the export and the import of the industrial chemicals that are listed in Annex III to the Convention.

Annex III to the Convention lists chemicals that have been notified as severely restricted or banned due to health or environmental reasons by other countries participating in the voluntary PIC Procedure. As a Party to the Convention, Australia must ensure that the chemicals listed in Annex III are not exported to countries that do not wish to receive them. Similarly, Australia

must also ensure that the chemicals listed in Annex III that it does not wish to receive are not imported to Australia. Regulations are therefore required to control the import and export of some of these Annex III chemicals, where controls are not already in place in Australia.

Subsection 106(1) of the Act provides that if an industrial chemical is the subject of a prescribed international agreement to which Australia is a party, the regulations may prohibit, either absolutely or subject to such conditions or restrictions as are prescribed, the introduction or export of the industrial chemical. Regulation 11B of the Principal Regulations currently prescribes the interim PIC procedure for the purposes of subsection 106(1).

The Regulations amends the Principal Regulations to prescribe the Convention for the purposes of subsection 106(1) of the Act. The Regulations also provide that specific chemicals may not be imported or exported without prior authorisation from the Director of NICNAS, which allows NICNAS to comply with Australia's obligations in relation to controlling or preventing export of Annex III listed chemicals to certain countries.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence on the commencement of Schedule 1 to the *Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Act 2004*.

Subsection 2(1) of that Act provides that Schedule 1 will commence on the later of the day that Act receives the Royal Assent and the day on which the Convention enters into force for Australia. In effect, the Regulations commence on 18 August 2004.

ATTACHMENT

DETAILS OF THE *INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT REGULATIONS 2004 (NO. 3)*

Regulation 1 named the Regulations as the *Industrial Chemicals (Notification and Assessment) Amendment Regulations 2004 (No. 3)*.

Regulation 2 provides for the Regulations to commence on the commencement of Schedule 1 to the *Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Act 2004*.

Regulation 3 provides for Schedule 1 to amend the *Industrial Chemicals (Notification and Assessment) Regulations 1990* (the Principal Regulations).

Schedule 1 - Amendment

Item 1

Item 1 amends regulation 11B to prescribe the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention) as a prescribed international agreement for the purposes of paragraph 106(1)(a) of the *Industrial Chemicals (Notification and Assessment) Act 1989*. Regulation 11B currently uses the term "the interim PIC procedure."

Item 1 also inserts new regulation 11C. Subregulation 11C(1) lists the industrial chemicals that are the subject of the Rotterdam Convention that, under new subregulation 11C(2), must not be exported from Australia without the prior written permission of the Director of NICNAS. New subregulation 11C(3) provides that the industrial chemical prescribed by subparagraph 11C(1)(a)(i) must not be introduced into Australia without the prior written permission of the Director of NICNAS.

The note for new subregulation 11C(3) explains that an introducer may also have obligations under section 21 of the Act in relation to the introduction of this chemical.

The note for new regulation 11C makes it clear that it is an offence under subsection 106(5) of the Act to contravene this regulation.