

## **EXPLANATORY STATEMENT**

Issued under the authority of the Assistant Minister for Health and Aged Care

*Industrial Chemicals Act 2019*

*Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024*

The *Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024* (the Rules) make amendments to the dollar amounts prescribed by the *Industrial Chemicals (Fees and Charges) Rules 2020* for the different kinds of fees for applications under the *Industrial Chemicals Act 2019*. It also repeals the *Industrial Chemicals (Fees and Charges) Amendment (2024 Measures No. 1) Rules 2024*, before it takes effect, as an inadvertent error was identified in the date on which it would have increased fees for applications for registration. All other amendments to the *Industrial Chemicals (Fees and Charges) Rules 2020* are the same as those that would have been made by the *Industrial Chemicals (Fees and Charges) Amendment (2024 Measures No. 1) Rules 2024*.

### **Authority**

The *Industrial Chemicals Act 2019* (the Act) establishes the Australian Industrial Chemicals Introduction Scheme (AICIS), the national regulatory framework for the introduction (importation or manufacture) of industrial chemicals.

Subsection 180(1) 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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make a legislative instrument that power is to be construed as including a power, exercisable in the same manner and subject to the same conditions (if any), to amend or vary the instrument.

### **Consultation**

No consultation was undertaken on the *Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024* (the Rules). However, a public consultation paper (as part of the Cost Recovery Implementation Statement (CRIS) 2024-25) was published on 2 April 2024 to seek stakeholder feedback on the proposed fees for services and charges. This consultation led to the implementation of the *Industrial Chemicals (Fees and Charges) Amendment (2024 Measures No. 1) Rules 2024*. However, an error in the commencement date of the registration application fee was identified. The error was corrected through a subsequent version of the *Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024* (the Rules). No consultation on this subsequent amendment was deemed essential as it simply rectifies an error found in the initial measure and accurately implements the policy outlined in the CRIS.

The consultation on CRIS detailed the proposed increase to fees for services by applying an indexation of 3.1%; and revised introduction value thresholds used to determine an introducer's

registration level resulting in either no increase or a reduction in levy charges for introducers with an introduction value less than \$15 million, forecasted to benefit 96% of registrants. A total of four submissions were received from industry stakeholders including industry associations with all supporting the proposed increase of fees for services by an indexation of 3.1%. Three submissions supported the proposed changes to the introduction value thresholds. However, one submission only supported proposed reductions but did not support the increase for those with an introduction value of \$15 million or greater.

AICIS recognises that the eight-tiered registration model, applied to determine the annual registration charge, is broadly informed by the effort required to undertake relevant leviable activities (e.g., compliance and enforcement, maintenance of the inventory, post-market evaluation and monitoring of chemicals, and regulatory support activities). Almost half of the 495 introducers previously register at level 8 (those with an introduction value from \$5 million to below \$15 million) will benefit from a charge reduction of approximately 24.5% (\$32,405 to \$24,500) a saving of \$7,905.

### **Commencement**

1. Sections 1 to 4 and Schedule 1 commence on the day after registration.
2. Schedule 2 commences on 1 September 2024.
3. Schedule 3 commences on the day after registration.

### **General**

The Act specifies no conditions that need to be satisfied before the power to make the Rules may be exercised. The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

**Details of the Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024**

**Part 1 – Preliminary**

Section 1 – Name

This section provides the title of the instrument as the *Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024* (the Rules).

Section 2 – Commencement

This section provides that the Rules commence as follows:

1. Sections 1 to 4 and Schedule 1 commence on the day after registration.
2. Schedule 2 commences on 1 September 2024.
3. Schedule 3 commences on the day after registration.

Section 3 – Authority

This section provides that the Rules are made under the *Industrial Chemicals Act 2019*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Rules has effect according to its terms.

Schedule 1 – Amendments commencing the day after registration

The Rules make routine annual amendments to the amounts of fees prescribed by the *Industrial Chemicals (Fees and Charges) Rules 2020* (Principal Rules) for the different kinds of applications that can be made under the Act. The amount of each fee has been determined based on costing the effort and resources required for delivery of the service being applied for. No new fees for services have been prescribed by the Rules.

**Item 1 – Subsection 5(1) (cell at table item 1, column headed “Amount (\$)”)**

Item 1 in the table in subsection 5(1) of the Principal Rules deals with application fees for applications for registration under section 16 of the Act.

Item 1 of Schedule 1 increases the application fee from \$75 to \$80. This reflects the 3.1% increase to the existing application fee for registration, to align with the efficient cost of providing each service as part of a fee for service model.

The increase to the fee for applications for registration is required to take effect from the day after the Rules are registered, so the new fee will apply for applications for registration made before 1 September 2024 but in respect of the registration year commencing on 1 September 2024.

## Schedule 2—Amendments commencing 1 September 2024

### **Item 1 – Paragraph 5(2)(b)**

### **Item 2 – Paragraph 5(3)(e)**

### **Item 3 – Paragraph 5(4)(e)**

Items 1 to 3 of Schedule 2 amend paragraphs 5(2)(b), (3)(e) and (4)(e) of the Principal Rules to update various fees for applications made under section 31 of the Act for an assessment certificate for the introduction of an industrial chemical to reflect the 3.1% increase to all existing fees to align with the efficient cost of providing each service as part of a fee for service model.

### **Item 4 – Subsection 5(1) (cell at table item 20, column headed “Amount (\$)”)**

### **Item 5 – Amendment of listed provisions – subsection 5(1)**

### **Item 6 – Amendment of listed provisions – subsection 5(2)**

Items 4 to 6 of Schedule 2 amend items in the tables to subsections 5(1) and (2) of the Principal Rules, also to reflect the 3.1% increase to all existing fees in the tables to align with the efficient cost of providing each service as part of a fee for service model.

The increase to these fees will take effect on 1 September 2024.

## Schedule 3—Repeals

### **Item 1 – The whole of the instrument**

Item 1 repeals the *Industrial Chemicals (Fees and Charges) Amendment (2024 Measures No. 1) Rules 2024* (the 2024 Measures No. 1 Amendment Rules).

The 2024 Measures No. 1 Amendment Rules would have made similar increases to the dollar amounts prescribed by the Principal Rules for the various kinds of fees for applications under the Act. However, after the 2024 Measures No. 1 Amendment Rules were made, it was identified that there was an inadvertent error in those Rules. Because the 2024 Measures No. 1 Amendment Rules did not commence until 1 September 2024, the increase to the fee for applications for registration under section 16 of the Act would not have applied to applications made before 1 September 2024, but in respect of the 1 September 2024 registration year.

The only difference between the Rules and the 2024 Measures No. 1 Amendment Rules is the date that the application fee for applications for registration under section 16 of the Act will take effect. There is no difference to the dollar amount of increase to any fees, and fees for all other types of applications take effect on 1 September.

As the 2024 Measures No. 1 Amendment Rules would not have commenced until 1 September, the repeal of the 2024 Measures No. 1 Amendment Rules and the making of the Rules will not mean any current applicants will be required to pay a higher fee for their application. Furthermore, the error in the date the increase to the registration application fee would take effect was identified and rectified promptly, meaning prospective applicants for registration for the new registration year commencing 1 September 2024 have not been acting on the basis that the fee increase will not apply to their applications.

**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 - Amendment and Repeal) Rules 2024*

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), the national regulatory framework for the introduction (importation or manufacture) of industrial chemicals.

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

The *Industrial Chemicals (Fees and Charges - Amendment and Repeal) Rules 2024* (the Rules) make a number of routine amendments to increase the amounts prescribed by the *Industrial Chemicals (Fees and Charges) Rules 2020* for the different kinds of fees for applications under the Act and repeals the *Industrial Chemicals (Fees and Charges) Amendment (2024 Measures No. 1) Rules*.

The increases to application fees take effect in two stages. The application fee for applications for registration made under section 16 of the Act will be increased on the day after the Rules are registered. All other increases will take effect on 1 September 2024.

The *Industrial Chemicals (Fees and Charges) Amendment (2024 Measures No. 1) Rules* (the 2024 Measures No. 1 Amendment Rules) would have made similar increases to application fees in the *Industrial Chemicals (Fees and Charges) Rules 2020*. However, all the amendments made by the 2024 Measures No. 1 Amendment Rules, including to applications for registration under section 16 of the Act, would have taken effect on 1 September 2024.

After the 2024 Measures No. 1 Amendment Rules were made, it was identified that the increase to the fee for applications for registration under section 16 of the Act needed to commence on the day after registration so that it would apply to applications for registration made before 1 September 2024, but in respect of the upcoming 1 September 2024 registration year.

The only difference between the Rules and the 2024 Measures No. 1 Amendment Rules is the date that the application fee for applications for registration under section 16 of the Act will take effect. There is no difference to the dollar amount of increase to any fees, and fees for all other types of applications take effect on 1 September.

As the 2024 Measures No. 1 Amendment Rules would not have commenced until 1 September, their repeal and the making of the Rules will not mean any current applicants will be required to pay a higher fee for their application. Furthermore, the error in the date the increase to the

registration application fee would take effect was identified and rectified promptly, meaning prospective applicants for registration for the new registration year commencing 1 September 2024 have not been acting on the basis that the fee increase will not apply to their applications.

### **Human rights implications**

As the Rules do not introduce any changes to the *Industrial Chemicals (Fees and Charges) Rules 2020* other than to implement the changes outlined above, this Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. While fees are being increased, this is necessary to support the important functions of assessing various applications relating to the importation or manufacture of industrial chemicals, which in turn supports the protection of people's right to health. The Rules do not set higher fees for any applications than would have been set by the 2024 Measures No. 1 Amendment Rules, had it commenced. The repeal of the 2024 Measures No. 1 Amendment Rules is to correct an inadvertent error that was identified before those Rules took effect and will not affect any current applicants.

### **Conclusion**

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

**The Hon Ged Kearney MP**

**Assistant Minister for Health and Aged Care**