

EXPLANATORY STATEMENT

Issued by the delegate of the Minister for the Environment and Water

Industrial Chemicals Environmental Management (Register) Act 2021

Industrial Chemicals Environmental Management (Register) Instrument 2022

Industrial Chemicals Environmental Management (Register) Amendment (2024 Measures No. 2) Instrument 2024

Authority

The *Industrial Chemicals Environmental Management (Register) Act 2021* (the Act) establishes a national framework to manage the ongoing import, export, manufacture, use and disposal of industrial chemicals, in order to reduce impacts on the environment and limit people's exposure to industrial chemicals.

Subsection 22(1) of the Act provides that the Minister may, by legislative instrument, establish a register of scheduling decisions for relevant industrial chemicals that are made or varied under Division 2 of Part 2 of the Act.

Subsection 11(1) of the Act allows the Minister to make one or more scheduling decisions for a relevant industrial chemical. Subsection 11(2) provides that if the Minister makes a scheduling decision for a relevant industrial chemical, the Minister must ensure that the decision for the chemical is recorded in that register.

The *Industrial Chemicals Environmental Management (Register) Amendment (2024 Measures No. 2) Instrument 2024* (the Amending Instrument) is made for the purposes of subsections 22(1) and 11(2) of the Act.

Subsection 74(1) of the Act allows the Minister to delegate the Minister's power under subsection 22(1) to, among others, a Senior Executive Service (SES) employee or acting SES employee in the Environment Department (currently the Department of Climate Change, Energy, the Environment and Water). The Branch Head of the Chemicals and Atmosphere Branch is a delegate of the Minister for the purpose of exercising the powers in subsections 22(1) and 11(2) of the Act.

Purpose

The purpose of the Amending Instrument is to amend the *Industrial Chemicals Environmental Management (Register) Instrument 2022* (the Register) to record scheduling decisions made under subsection 11(1) of the Act in relation to five relevant industrial chemicals and to record variations of scheduling decisions made under subsection 12(1) of the Act in relation to four relevant industrial chemicals.

The scheduling decisions recorded in the Amending Instrument have the effect of listing two chemicals in Schedule 3 and three chemicals in Schedule 7 of the Register. These scheduling decisions also impose risk management measures on those listed chemicals, including prohibitions and restrictions for those to be added to Schedule 7 of the Register.

The variations of scheduling decisions recorded in the Amending Instrument have the effect of varying the existing scheduling decisions for four chemicals in Schedule 7 of the Register. These variations correct minor and technical errors in the existing scheduling decisions for these chemicals.

It is intended that the scheduling decisions in the Register will be adopted, implemented and enforced by all Australian jurisdictions under their own legislation to create a national standard for the management of the environmental risks of industrial chemicals.

Background

The Act establishes a national framework to manage the ongoing import, export, manufacture, use and disposal of industrial chemicals to reduce impacts on the environment and limit people's exposure to industrial chemicals.

In July 2015, the Commonwealth, States and Territories agreed to establish a National Standard for the Environmental Risk Management of Industrial Chemicals (the National Standard – now known as the Industrial Chemicals Environmental Management Standard, or IChEMS). IChEMS was intended to provide for a consistent, nation-wide approach to managing the risks that industrial chemicals may pose to the environment.

The Act provides the legislative basis for establishing the IChEMS by enabling the Minister to make scheduling decisions in relation to an industrial chemical. A scheduling decision can categorise an industrial chemical based on its risk characteristics and set out the controls applicable to the import, export, manufacture, use and disposal of an industrial chemical. Controls may include restrictions or prohibitions on any of these activities.

The Register is a legislative instrument made under subsection 22(1) of the Act that sets out all scheduling decisions made or varied by the Minister under that Act.

The Register contains 7 schedules. These schedules are titled:

- Schedule 1 – Relevant industrial chemicals that are not appropriate for listing in the other Schedules;
- Schedule 2 – Relevant industrial chemicals that are unlikely to cause harm to the environment;
- Schedule 3 – Relevant industrial chemicals that have the potential to cause harm to the environment;
- Schedule 4 – Relevant industrial chemicals that may cause harm to the environment;
- Schedule 5 – Relevant industrial chemicals that are likely to cause harm to the environment;
- Schedule 6 – Relevant industrial chemicals that are likely to cause serious or irreversible harm to the environment with essential uses;
- Schedule 7 – Relevant industrial chemicals that are likely to cause serious or irreversible harm to the environment with no essential uses.

Risk characteristics are detailed for each of the 7 schedules in the *Industrial Chemicals Environmental Management (Register) Principles 2022* (the Principles). Under the Act, the Minister is required to comply with the Principles when making, varying or revoking a scheduling decision for a relevant industrial chemical. Under the Principles, if an industrial chemical, or a particular use of the industrial chemical, is classified as having the risk characteristics for a particular Schedule of the Register, the Minister is required to list the

industrial chemical, or use of the industrial chemical, in that schedule. Chemicals in higher schedules will usually require more active management of environmental risks, including in some cases the imposition of prohibitions or restrictions on the import, export, manufacture, or use of the chemical.

Scheduling decisions are not enforceable in and of themselves. Following the establishment of appropriate legislative frameworks, the Commonwealth, States and Territories will be responsible for the implementation and enforcement of the scheduling decisions, recorded in the Register, within their jurisdictions. This will drive national consistency in the management of industrial chemicals through a more streamlined, transparent, efficient, and predictable approach to environmental risk management, providing better protection for the environment.

Impact and effect

The Amending Instrument amends the Register to record new scheduling decisions that have been made for the following relevant industrial chemicals:

- Schedule 3: Lauryl (dodecyl) sulfates;
- Schedule 3: Linear alkylbenzene sulfonates;
- Schedule 7: Benzene, hexachloro- (Hexachlorobenzene);
- Schedule 7: 1,1'-Biphenyl, chloro derivatives (Polychlorinated biphenyls, PCBs);
- Schedule 7: Polychlorinated terphenyls (PCTs).

The effect of these scheduling decisions is to list each of these chemicals in the relevant schedule and to impose appropriate risk management measures. For Schedule 7 chemicals this includes prohibitions and restrictions.

The Amending Instrument also has the effect of amending the Register to reflect variations to the existing scheduling decisions for four relevant industrial chemicals listed in Schedule 7. These variations correct minor and technical errors in the existing scheduling decisions.

Disallowance and sunseting

The Register is exempt from disallowance and sunseting requirements under the *Legislation Act 2003* (Legislation Act). This is because the Register is made under an Act which facilitates the establishment and operation of an inter-governmental scheme involving the Commonwealth and the States and Territories and authorises the Register to be made for the purposes of that inter-governmental scheme.

Subsections 44(1) and 54(1) of the Legislation Act respectively provide that section 42 (concerning disallowance) and Part 4 of Chapter 3 (concerning sunseting) of that Act do not apply in relation to a legislative instrument, or a provision of a legislative instrument, if the enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States, and authorises the instrument to be made by the body, or for the purposes of the body or scheme.

While this means the Register will be subject to reduced parliamentary scrutiny, this is appropriate as the Commonwealth Parliament should not be able to unilaterally disallow instruments that are part of a multilateral scheme; nor (for the same reasons) should such instruments be able to sunset.

Consultation

The Register records scheduling decisions made under the Act that will not be enforceable in and of themselves. On this basis, no consultation on this specific instrument was conducted.

However, the scheduling decisions that are recorded in the Register have been subject to public consultation consistent with the requirements of section 17 of the Act. These consultations were open from 26 September to 25 October 2024 for the 9 relevant industrial chemicals.

All submissions received in accordance with the section 17 notice were taken into account under paragraph 15(1)(g) of the Act, and other information provided was taken into account under paragraph 16(1)(i) of the Act.

The three chemicals listed in Schedule 7 of the Register were referred to the Advisory Committee on the Environmental Management of Industrial Chemicals (the Advisory Committee). Advice provided by the Advisory Committee was taken into account under paragraph 15(1)(e) of the Act.

Section 21 of the Act provides for consultation with state and territory Environment Ministers. State and territory governments have been consulted throughout the development of these scheduling decisions.

Consultation on the adoption, implementation and enforcement of the scheduling decisions in the Register is ongoing with both industry and States and Territories.

Details and operation

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

The Amending Instrument commences on the day after it is registered on the Federal Register of Legislation.

Other

The Amending Instrument is a legislative instrument for the purposes of the Legislation Act.

As the Amending Instrument is exempt from disallowance, in accordance with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights is not required.

Details of the *Industrial Chemicals Environmental Management (Register) Amendment (2024 Measures No.1) Instrument 2024*

Section 1 – Name

1. Section 1 provides that the name of the instrument is the *Industrial Chemicals Environmental Management (Register) Amendment (2024 Measures No.2) Instrument 2024* (the Amending Instrument).

Section 2 - Commencement

2. Section 2 provides that the Amending Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
3. The note below the table provides that the table relates only to the provisions of the Amending Instrument as originally made. It will not be amended to deal with any later amendments of the Amending Instrument. The purpose of this note is to clarify that the commencement of any subsequent amendments is not reflected in the table.
4. Subsection 2(2) clarifies that any information in column 3 of the table is not part of the Amending Instrument. Information may be inserted in this column, or edited in this column, in any published version of the Amending Instrument. For example, the date the Amending Instrument commenced will be inserted in this column once that has occurred.

Section 3 - Authority

5. Section 3 provides that the Amending Instrument is made under subsection 22(1) of the *Industrial Chemicals Environmental Management (Register) Act 2021* (the Act).

Section 4 – Schedules

6. Section 4 sets out that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
7. The effect is that the amendments made by Schedule 1 to the Amending Instrument amend the *Industrial Chemicals Environmental Management (Register) Instrument 2022* (the Register) as set out in Schedule 1.

Schedule 1 - Amendments

Item 1

8. This item inserts into Section 4 of the Register a definition of ‘***Polychlorinated Biphenyls Management Plan***’ to mean the Polychlorinated Biphenyls Management Plan published by the Australian and New Zealand Environment and Conservation Council in November 1996, as existing from time to time.

Item 2

9. Item 2 of Schedule 1 to the Amending Instrument amends existing Schedule 3 of the Register to record scheduling decisions for the following relevant industrial chemicals with the following chemical class names by inserting them at the end of the table:
 - a. Laurel (dodecyl) sulphates;
 - b. Linear alkylbenzene sulfonates.
10. Schedule 3 records scheduling decisions for relevant industrial chemicals that have the potential to cause harm to the environment.

Item 3

11. Item 3 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record the scheduling decision for the relevant industrial chemicals with the chemical class name 1,1'-Biphenyl, chloro derivatives (Polychlorinated biphenyls, PCBs) by inserting it into the table.
12. Schedule 7 records scheduling decisions for relevant industrial chemicals that are likely to cause serious or irreversible harm to the environment with no essential uses.

Item 4

13. Item 4 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record a variation of the existing scheduling decision for the relevant industrial chemical with the name of Benzene, 1,2,3,4,5-pentachloro.
14. This variation corrects paragraph (c) of column 3 of that listing by adding “; or (iii) for research and laboratory purposes.”. The correction creates consistency with the other scheduling decisions in Schedule 7 by including this exception which is permitted under subsection 14(2)(a)(i) of the *Industrial Chemicals Environmental Management (Register) Principles 2022*.

Item 5

15. Item 5 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record a variation of the existing scheduling decision for the relevant industrial chemical with the name of Benzene, 1,2,3,4,5-pentachloro.
16. This variation corrects subparagraph (e)(ii) of column 3 of that listing. It omits “stored” and substitutes “managed”.

Item 6

17. Item 6 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record the scheduling decision for the relevant industrial chemicals with the chemical name Benzene, hexachloro- (Hexachlorobenzene) by inserting it into the table.

18. Schedule 7 records scheduling decisions for relevant industrial chemicals that are likely to cause serious or irreversible harm to the environment with no essential uses.

Item 7

19. Item 7 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record a variation of the existing scheduling decision for the relevant industrial chemical with the class name of Perfluorooctanesulfonic acid (PFOS).

20. This variation corrects subparagraph (c)(i) of column 3 by omitting “in the article”.

Item 8

21. Item 8 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record two variations of the existing scheduling decision for the relevant industrial chemical with the class name of Perfluorooctanoic acid (PFOA).

22. These variations:

- correct a chemical formula in column 1, by omitting “C7H15C” and substituting “C7F15C”; and
- corrects subparagraph (e)(ii) of column 3, by omitting “stored” and substituting “managed”.

Item 9

23. Item 9 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to record the scheduling decision for the relevant industrial chemicals with the chemical class name Polychlorinated terphenyls (PCTs) by inserting it into the table.

24. Schedule 7 records scheduling decisions for relevant industrial chemicals that are likely to cause serious or irreversible harm to the environment with no essential uses.

Item 10

25. Item 10 of Schedule 1 to the Amending Instrument amends existing Schedule 7 of the Register to reflect a variation of the existing scheduling decision for the relevant industrial chemical with the class name of Short chain chlorinated paraffins.

26. This variation corrects text in column 1. It omits “ranges” and substitutes “ranging”.