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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRIAL CHEMICALS CHARGES (GENERAL) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister for Health, the Hon Dr David
Gillespie MP)

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OUTLINE

The Industrial Chemicals Charges (General) Bill 2017 is part of an industrial chemicals legislative reform package designed to make regulatory effort more proportionate to risk, to promote safer innovation by encouraging the introduction of lower risk chemicals, and to maintain protections for human health and the environment.

The other Bills in the reform package include the: Industrial Chemicals (Notification and Assessment) Amendment Bill 2017; Industrial Chemicals Bill 2017; Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017; Industrial Chemicals Charges (Excise) Bill 2017; and Industrial Chemicals Charges (Customs) Bill 2017.

The Industrial Chemicals Charges (General) Bill 2017 has, as its main purpose, measures that allow for the imposition of a charge in relation to registration of introducers of industrial chemicals in accordance with the Industrial Chemicals Bill 2017.

The Industrial Chemicals Bill 2017 provides that:

- an introducer must be registered on the Register of Industrial Chemical Introducers (the Register) for a registration year before introducing an industrial chemical during that year (with penalties for failure to meet this requirement)
- a registration charge may be payable for each registration year. The Industrial Chemicals Charges (General) Bill 2017 imposes the charge and enables regulations to describe the methods for working out the annual registration charge applicable to each introducer of industrial chemicals.

Financial Impact Statement

The Bill has no financial impact on the Commonwealth, as it remains Government policy that the cost of the Commonwealth industrial chemicals scheme is fully recovered from the regulated industry.

Statement of Compatibility with Human Rights

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

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This Bill 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 Bill

The Industrial Chemicals Charges (General) Bill 2017 is one of three Bills enabling the Commonwealth to collect an annual charge (a registration charge) on person's introducing chemicals into Australia (by import or manufacture) in accordance with the Industrial Chemicals Bill 2017. The other two Bills are the Industrial Chemicals Charges (Excise) Bill 2017 and the Industrial Chemicals Charges (Customs) Bill 2017.

It is proposed that rules made under the Industrial Chemicals Charges (General) Bill 2017 will base the amount of the registration charge on the value of industrial chemicals introduced by the person in the registration year (which is defined in the Industrial Chemicals Bill 2017 as commencing on 1 September of each year. Imposition of the charge is one way in which the costs of the regulatory schemes for industrial chemicals will be recovered from the regulated industry.

Human rights implications

The Bill in isolation does not engage any of the applicable rights or freedoms. It enables the imposition of a charge in accordance with the Industrial Chemicals Bill 2017.

The Bill provides for the imposition of an annual registration charge on a person introducing chemicals under the Industrial Chemicals Bill 2017. It also provides for the rate of a charge to be prescribed in the regulations. This Bill is necessary to give effect to the Government's reforms to the regulation of industrial chemicals. The principal reforms are set out in the Industrial Chemicals Bill 2017. A Statement of Compatibility with Human Rights in relation to the reforms is attached to the Explanatory Memorandum for that Bill.

Conclusion

This Bill is compatible with human rights because it promotes the protection of the human right to health.

The Hon Dr David Gillespie MP, Assistant Minister for Health

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NOTES ON CLAUSES

Clause 1 – Short title

The short title of the Act is the *Industrial Chemicals Charges (General) Act 2017* (the Act).

Clause 2 – Commencement

Clauses 1 and 2 of the Bill will commence the day the Act receives the Royal Assent and all other clauses in the Bill commence on the later of:

- the start of the day after the Act receives the Royal Assent
- immediately after the commencement of section 3 of the *Industrial Chemicals Act 2017*.

However, the provisions do not commence at all if that section does not commence.

Clause 3 – Extension to external Territories

The Bill extends to every external Territory of Australia. This means that the Act will extend to: Ashmore and Cartier Islands; Christmas Island; the Cocos (Keeling) Islands; the Coral Sea Islands; the Australian Antarctic Territory; the Territory of the Heard and McDonald Islands and Norfolk Island.

Clause 4 – Act binds the Crown

The Bill binds the executive governments in each of the States, and the Territories. The Bill does not bind the Commonwealth. This means that the Commonwealth cannot be prosecuted for an offence, be subject to a civil penalty, or be given an infringement notice under the Act.

Clause 5 – Definitions

Definitions of key terms used in the Act are provided. In summary, the terms *industrial chemical, introduction, and registration year*, have the same meaning as described in the *Industrial Chemicals Act 2017*.

Two new definitions that are included for the purposes of this Bill are:

- *amount*, which is defined to include a nil amount. This allows for situations where the charge may be \$0 for some types of chemicals or for some values below a certain threshold (or a combination of these matters)
- *property of any kind belonging to a State*, which has the same meaning as section 114 of the Constitution. Section 114 provides, amongst other things, that the Commonwealth shall not impose any tax on property of any kind belonging to a State.

Clause 6 – Imposition of charge

A registration charge may be imposed in relation to the registration of a person under the *Industrial Chemicals Act 2017*.

That Act stipulates that all introducers of industrial chemicals (other than introducers of excluded introductions defined in section 17 of the *Industrial Chemicals Act 2017*) are liable to pay a registration charge.

The registration charge is paid when a person applies for registration for a year. The registration year commences on 1 September of each year.

A charge is only imposed so far as that charge is neither a duty of customs nor a duty of excise within the meaning of section 55 of the Constitution.

If the charge is characterised as a duty of customs, it will be imposed under the *Industrial Chemicals Charges (Customs) Act 2017*. If it is characterised as a duty of excise it will be imposed under the *Industrial Chemicals Charges (Excise) Act 2017*. Three separate Acts are required because section 55 of the Constitution requires that matters of taxation, excise and customs be dealt with in separate Acts.

Clause 7 – Amount of charge

The amount of the registration charge is the amount prescribed in the regulations made under the Act or worked out in accordance with a method described in the regulations

It is anticipated that the amount of the charge will be determined having regard to the value of industrial chemicals introduced by the introducer in a registration year. Prior to the introduction of any regulations prescribing the charge, the proposed approach will be documented in a cost recovery implementation statement (consistent with the Australian Government Cost Recovery Guidelines) and subject to public consultation.

Clause 8 – Act does not impose tax on property of a State

The Act does not impose a tax on property of any kind belonging to a State. This provision ensures the Act does not contravene section 114 of the Constitution, which prohibits the Commonwealth imposing any tax on the property of any kind belonging to a State.

Clause 9 – Regulation

The Governor-General has regulation-making powers for prescribing matters that are required or permitted for the purposes of the Act or that are necessary or convenient for carrying out or giving effect to the Act.