



# **Industrial Chemicals Act 2019**

**No. 12, 2019**

## **Compilation No. 1**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Industrial Chemicals Act 2019* that shows the text of the law as amended and in force on 16 December 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to establish a national regulatory scheme for industrial chemicals, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act is the *Industrial Chemicals Act 2019*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 March 2019
2. Sections 3 to 180	1 July 2020.	1 July 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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**3 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
  - (a) prosecuted for an offence; or
  - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
  - (c) given an infringement notice under Part 5 of the Regulatory Powers Act.

**4 Alternative constitutional basis for this Act**

Without limiting its effect apart from this section, this Act also has the effect it would have if each reference to the manufacture of industrial chemicals were expressly confined to:

- (a) the manufacture of those chemicals in Australia:
  - (i) by a constitutional corporation; or
  - (ii) by the Commonwealth or a Territory, or an authority of the Commonwealth or a Territory; or
  - (iii) by a body corporate incorporated in a Territory; or
  - (iv) for supply to a constitutional corporation; or
  - (v) for supply in the course of constitutional trade and commerce; or
  - (vi) for supply to, or to an authority of, the Commonwealth or a Territory; and
- (b) the manufacture of those chemicals in a Territory or a Commonwealth place.

**5 Extension to external Territories**

This Act extends to every external Territory.

**6 Relationship to other laws**

- (1) The provisions of this Act are in addition to, and not in substitution for, the requirements of any other law of the Commonwealth

(whether passed or made before or after the commencement of this Act).

- (2) This Act does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

## **7 Objects of this Act**

The objects of this Act are to:

- (a) provide for a national scheme to regulate the introduction of industrial chemicals in Australia; and
- (b) aid in the protection of human health and the environment including through:
  - (i) the regulation of the introduction of industrial chemicals; and
  - (ii) the assessment and evaluation of the introduction and use of certain industrial chemicals; and
  - (iii) the provision of information and recommendations about managing the risks arising from the introduction and use of industrial chemicals; and
- (c) provide for the collection and publication of information and statistics relating to industrial chemicals; and
- (d) give effect to Australia's obligations under international agreements and arrangements relating to the regulation of industrial chemicals.

## **8 Simplified outline of this Act**

This Act establishes the Australian Industrial Chemicals Introduction Scheme, and an Executive Director, to regulate the introduction (manufacture or import) of industrial chemicals.

A chemical is an industrial chemical to the extent that it is used other than for agricultural, veterinary or therapeutic purposes, or in food or feed (which are regulated by other schemes).

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Introducers must be registered for a registration year (which begins on 1 September). A registration charge must be paid for registration. Penalties apply if a person introduces an industrial chemical when not registered.

Introductions must also comply with the requirements of a category of introduction, which are based on the level of risk to human health and the environment from the introduction.

Lower risk introductions (exempted and reported introductions) can be made without being assessed by the Executive Director. However, record keeping and reporting obligations apply.

Medium-to-high risk introductions require an assessment certificate issued by the Executive Director and must comply with the terms of the certificate. A person can also apply for commercial evaluation authorisations and the Minister can issue exceptional circumstances authorisations.

Industrial chemicals covered by an assessment certificate are listed on the Australian Inventory of Industrial Chemicals after 5 years. However, applications can be made for early listing and industrial chemicals can be listed in certain other circumstances. Any registered person can introduce an industrial chemical that is listed on the Inventory but must comply with the terms of the Inventory listing and record keeping and reporting requirements.

The Executive Director may initiate evaluations of industrial chemicals, or matters relating to industrial chemicals. Evaluations may result in changes to assessment certificates or Inventory listings or recommendations being made about the introduction and use of industrial chemicals.

The Executive Director is required to publish assessment statements, evaluation statements and other information under this Act. Applications can be made by any person for confidential business information not to be published.

This Act also contains provisions for monitoring and enforcement and provisions implementing Australia's obligations under certain international agreements.

## 9 Definitions

In this Act:

**AACN** (short for AICIS approved chemical name) means a name for an industrial chemical determined by the Executive Director under paragraph 108(3)(a).

**AAT** means the Administrative Appeals Tribunal.

**administrative action** means any of the following:

- (a) making a decision;
- (b) exercising any power or complying with any obligation;
- (c) doing anything else that relates to making a decision or exercising a power or complying with an obligation.

**Agvet Code** means the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

**AICIS**: see *Australian Industrial Chemicals Introduction Scheme*.

**animal test data** means data or information of a kind prescribed by the rules for the purposes of this definition that relates to tests conducted on the following:

- (a) any live vertebrate animal (other than a human being or other animal prescribed by the rules for the purposes of this paragraph);
- (b) any animal of a kind prescribed by the rules for the purposes of this paragraph.

**approved form** means a form that is approved, in writing, by the Executive Director.

**article** means an object that:

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- (a) is produced for use for a particular purpose, being a purpose that requires that the object have a particular shape, surface or design; and
  - (b) is formed to that shape, surface or design during production; and
  - (c) undergoes no change of chemical composition when used for that purpose except as an intrinsic aspect of that use;
- but does not include an object of a kind prescribed by the rules for the purposes of this definition.

**assessment statement** means a written statement issued by the Executive Director in relation to an assessment of an industrial chemical that includes the following information:

- (a) the proper name for the industrial chemical;
- (b) the end use for the industrial chemical;
- (c) the defined scope of assessment;
- (d) a summary of the assessment and any risks to human health or the environment from the introduction or use of the industrial chemical;
- (e) the means for managing any risks identified in the course of conducting the assessment, including the following:
  - (i) recommendations relating to the introduction or use of the industrial chemical;
  - (ii) any conditions of a kind mentioned in subsection 38(2) or 81(2);
  - (iii) any specific requirements to provide information to the Executive Director as mentioned in paragraph 38(1)(d) or 81(1)(e);
- (f) any other information relating to the safe introduction and use of the industrial chemical that the Executive Director considers relevant.

Note: If an application to treat the proper name or end use for the industrial chemical as confidential business information has been approved, an AACN or generalised end use must be included in the statement instead of the proper name or end use if prescribed circumstances apply: see section 109.



***Australian Industrial Chemicals Introduction Scheme*** means the scheme established under section 140.

***Australia's designated national authority*** means the non-corporate Commonwealth entity or person who is Australia's designated national authority for industrial chemicals for the purposes of Article 4 of the Rotterdam Convention.

***authorised inspector*** means a person appointed as an authorised inspector under section 137.

***CAS name***, for an industrial chemical, means the Chemical Abstracts Index Name for the industrial chemical.

***CAS number***, for an industrial chemical, means the Chemical Abstracts Service Registry Number for the industrial chemical.

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***Commonwealth place*** means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

***confidence holder***, for an approval under subsection 108(1), has the meaning given by subsection 110(2).

***consideration period***:

- (a) for an application for an assessment certificate—has the meaning given by subsection 32(2); or
- (b) for an application to vary a term of an assessment certificate—has the meaning given by subsection 44(2); or
- (c) for an application for a commercial evaluation authorisation—has the meaning given by subsection 54(2); or
- (d) for an application to vary a term of a commercial evaluation authorisation—has the meaning given by subsection 63(2); or
- (e) for an application to vary a term of an Inventory listing—has the meaning given by subsection 89(2).

Note: For circumstances affecting the calculation of the consideration period: see section 169.

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**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**constitutional trade and commerce** means:

- (a) trade or commerce between Australia and places outside Australia; and
- (b) trade or commerce among the States; and
- (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

**cosmetic** means:

- (a) a substance or preparation intended for placement in contact with any external part of the human body, including:
  - (i) the mucous membranes of the oral cavity; and
  - (ii) the teeth;with a view to:
  - (iii) altering the odours of the body; or
  - (iv) changing its appearance; or
  - (v) cleansing it; or
  - (vi) maintaining it in good condition; or
  - (vii) perfuming it; or
  - (viii) protecting it; or
- (b) a substance or preparation prescribed by the rules for the purposes of this paragraph;

but does not include:

- (c) a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*; or
- (d) a substance or preparation prescribed by the rules for the purposes of this paragraph.

Note: An ingredient or component of a cosmetic could be an industrial chemical.

**end use**, for an industrial chemical, means a purpose to which the industrial chemical can be applied.

**entrusted person** has the meaning given by subsection 115(2).

**evaluation statement** means a statement of the kind mentioned in subsection 73(2) or 78(2).

**excluded introduction** has the meaning given by section 11.

**Executive Director** means the person appointed as the Executive Director under section 143.

**exempted introduction** has the meaning given by subsection 26(2).

**export** an industrial chemical means do an act that constitutes exportation of the industrial chemical for the purposes of the *Customs Act 1901*, or would constitute such exportation if that Act extended to the external Territories.

**generalised end use**: means a generalised description of an end use for an industrial chemical determined by the Executive Director under paragraph 108(4)(a).

**Gene Technology Regulator** has the same meaning as in the *Gene Technology Act 2000*.

**GM product** has the same meaning as in the *Gene Technology Act 2000*.

**holder**:

- (a) of an assessment certificate—means a person to whom the certificate is issued under section 37 (subject to sections 41 and 42); or
- (b) of a commercial evaluation authorisation—means a person to whom the authorisation is issued under section 58 (subject to sections 60 and 61); or
- (c) of an exceptional circumstances authorisation—means a person to whom the authorisation is issued under section 67; or
- (d) of an approval for the proper name or end use for an industrial chemical to be treated as confidential business information—a person to whom an approval is given under section 108; or

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- (e) of an approval for information to be treated as confidential business information in relation to an industrial chemical—a person to whom an approval is given under section 114.

**import** an industrial chemical means do an act that constitutes importation of the industrial chemical for the purposes of the *Customs Act 1901*, or would constitute such importation if that Act extended to the external Territories.

**incidentally-introduced chemical** means an industrial chemical:

- (a) that is introduced, either with or subsequent to the introduction of another industrial chemical, as a result of any of the following:
- (i) the incomplete reaction of starting materials or reaction intermediates used in the manufacture of the other industrial chemical;
  - (ii) an unintended constituent present in the starting materials used in the manufacture of the other industrial chemical;
  - (iii) the exposure of the other industrial chemical to light, heat or other environmental conditions in the course of handling or storage;
  - (iv) the occurrence of a chemical reaction during the manufacture or use of the other industrial chemical; and
- (b) the introduction of which has no commercial value separate from the other industrial chemical.

**industrial chemical**: see section 10.

**industrial use** means a use other than (or in addition to) one of the following uses:

- (a) use as an agricultural chemical product (within the meaning of the Agvet Code) or in the preparation of such a product;
- (b) use as a veterinary chemical product (within the meaning of the Agvet Code) or in the preparation of such a product;
- (c) use as a substance or mixture of substances mentioned in paragraph 5(4)(a) of the Agvet Code (which deals with substances or mixtures of substances prepared by a

- pharmacist or veterinary surgeon) or in the preparation of such a substance or mixture of substances;
- (d) use as a therapeutic good (within the meaning of the *Therapeutic Goods Act 1989*) or in the preparation of such a good;
  - (e) use as food intended for consumption by humans or in the preparation of such food;
  - (f) use as feed intended for consumption by animals or in the preparation of such feed;
  - (g) any use prescribed by the rules for the purposes of this paragraph.

**introduce** an industrial chemical means import, or manufacture in Australia, the industrial chemical.

**Inventory** means the Australian Inventory of Industrial Chemicals established under section 80.

**issuing officer** means:

- (a) a magistrate; or
- (b) a Judge of a court of a State or Territory; or
- (c) if a Judge of the Federal Circuit Court of Australia or a Judge of the Federal Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge.

Note: Section 75 of the Regulatory Powers Act deals with the powers of, and confers protection and immunity on, issuing officers.

**manufacture** an industrial chemical means do any of the following:

- (a) produce the industrial chemical in the course of a chemical reaction;
- (b) extract the industrial chemical from a natural environment, with or without chemical change;
- (c) extract the industrial chemical from a UVCB substance;
- (d) produce or extract the industrial chemical in circumstances prescribed by the rules for the purposes of this paragraph;

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but does not include producing or extracting the industrial chemical as described in paragraphs (a), (b) or (c) in circumstances prescribed by the rules for the purposes of this definition.

***naturally-occurring chemical*** means:

- (a) an unprocessed chemical occurring in a natural environment; or
- (b) a chemical occurring in a natural environment that is extracted without chemical change by:
  - (i) manual, mechanical or gravitational means; or
  - (ii) dissolution in water; or
  - (iii) flotation; or
  - (iv) a process of heating for the sole purpose of removing uncombined water; or
  - (v) any other process prescribed by the rules for the purposes of this subparagraph.

***non-corporate Commonwealth entity*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***non-isolated intermediate*** means an industrial chemical that:

- (a) is produced in the course of the manufacture of another industrial chemical; and
- (b) is consumed in the course of the manufacture of the other industrial chemical; and
- (c) is not intentionally removed from the equipment in which it is manufactured (other than by sampling); and
- (d) is not likely to be released into the environment during normal operations.

***notified industrial chemical*** means an industrial chemical that has at any time been the subject of a notification by Australia, or any other Party to the Rotterdam Convention, under paragraph 1 or 2 of Article 5 of the Rotterdam Convention.

***paid work*** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

***prescribed international agreement*** means an international agreement:

- (a) to which Australia is a party; and
- (b) that is prescribed by the rules for the purposes of this paragraph.

***prescribed international arrangement*** means an international arrangement that:

- (a) provides for countries to ban, restrict or otherwise regulate the introduction, use or export of an industrial chemical for the purposes of protecting the environment, public health or occupational health and safety; and
- (b) is prescribed by the rules for the purposes of this paragraph.

***previously regulated***: a chemical was ***previously regulated*** under a law of the Commonwealth if:

- (a) the chemical has been, but is no longer, within the scope of regulation of a Commonwealth law that:
  - (i) relates to chemicals; and
  - (ii) is prescribed by the rules for the purposes of this subparagraph; or
- (b) the chemical is contained in a product that has been, but is no longer, within the scope of regulation of any of the following:
  - (i) the *Agricultural and Veterinary Chemicals Code Act 1994*;
  - (ii) the *Therapeutic Goods Act 1989*;
  - (iii) the *Food Standards Australia New Zealand Act 1991*;
  - (iv) another Commonwealth law that relates to chemicals in products (whether consisting of a single chemical or not) and is prescribed by the rules for the purposes of this subparagraph.

***protected information*** has the meaning given by subsection 115(3).

***Register*** means the Register of Industrial Chemical Introducers established under section 14.

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**registration charge** means a charge imposed on the registration of a person:

- (a) so far as it is a duty of customs—by the *Industrial Chemicals Charges (Customs) Act 2019*; and
- (b) so far as it is a duty of excise—by the *Industrial Chemicals Charges (Excise) Act 2019*; and
- (c) so far as it is neither a duty of customs nor a duty of excise—by the *Industrial Chemicals Charges (General) Act 2019*.

**registration year** means 12 months beginning on:

- (a) 1 September 2020; or
- (b) 1 September of any subsequent year.

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**relevant court** means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit Court of Australia; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

**reported introduction** has the meaning given by subsection 27(2).

**reviewable decision** has the meaning given by subsection 166(1).

**Rotterdam Convention** means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998, as amended and in force for Australia from time to time.

Note: The Rotterdam Convention is in Australian Treaty Series 2004 No. 22 ([2004] ATS 22) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**rules** means the rules made under section 180.

**Secretariat** means the Secretariat established under Article 19 of the Rotterdam Convention.



**terms:**

- (a) of an assessment certificate for an industrial chemical—has the meaning given by subsection 38(1); and
- (b) of a commercial evaluation authorisation for an industrial chemical—has the meaning given by subsection 59(1); and
- (c) of an exceptional circumstances authorisation for an industrial chemical—has the meaning given by subsection 67(3); and
- (d) of an Inventory listing for an industrial chemical—has the meaning given by subsection 81(1).

**this Act** includes the rules.

**use**, for an industrial chemical, includes any of the following activities involving the industrial chemical:

- (a) processing;
- (b) formulating;
- (c) storing;
- (d) transporting;
- (e) filling into containers;
- (f) transferring from a container to another container;
- (g) handling;
- (h) mixing;
- (i) sampling and testing;
- (j) producing an article;
- (k) releasing into the environment (with or without prior treatment);
- (l) activities relating to an end use for the industrial chemical;
- (m) any other activity prescribed by the rules for the purposes of this paragraph;

but does not include an activity prescribed by the rules for the purposes of this definition.

**UVCB substance** (short for unknown variable composition or biological substance) means any of the following:

- (a) a chemical of unknown or variable composition;

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- (b) a complex product of a chemical reaction;
- (c) biological material, other than a whole animal or a whole plant.

**working day** means a business day other than a day prescribed by the rules for the purposes of this definition.

### 10 Definition of *industrial chemical*

- (1) For the purposes of this Act, ***industrial chemical*** means any of the following:
  - (a) a chemical element that has an industrial use;
  - (b) a compound or complex of a chemical element that has an industrial use;
  - (c) a UVCB substance that has an industrial use;
  - (d) a chemical released from an article where the article has an industrial use;
  - (e) a naturally-occurring chemical that has an industrial use;
  - (f) any other chemical or substance prescribed by the rules for the purposes of this paragraph that has an industrial use.
- (2) Despite subsection (1), ***industrial chemical*** does not include a chemical or substance prescribed by the rules for the purposes of this subsection.
- (3) To avoid doubt, this Act only applies in relation to an industrial chemical to the extent that the industrial chemical is used, or proposed to be used, for an industrial use.

### 11 Application of this Act to excluded introductions

- (1) This Act (other than Parts 1, 4, 7, 9 and 10 and Division 4 of Part 6) does not apply in relation to an excluded introduction.
- (2) An introduction of an industrial chemical is an ***excluded introduction*** if the introduction is of any of the following:
  - (a) a naturally-occurring chemical;
  - (b) a non-isolated intermediate;

- (c) an incidentally-introduced chemical;
  - (d) an industrial chemical that was released from an article that was not designed to release it;
  - (e) an industrial chemical of a kind prescribed by the rules for the purposes of this paragraph.
- (3) An introduction of an industrial chemical is an ***excluded introduction*** if:
- (a) the industrial chemical is introduced at a port or airport in Australia; and
  - (b) the industrial chemical remains subject to customs control under the *Customs Act 1901* at all times before leaving Australia; and
  - (c) the industrial chemical leaves Australia within 25 working days beginning the day the industrial chemical is introduced.
- (4) An introduction of an industrial chemical is an ***excluded introduction*** if circumstances prescribed by the rules for the purposes of this subsection apply in relation to the introduction.
- (5) An introduction of an industrial chemical by an individual is an ***excluded introduction*** if the industrial chemical is introduced solely for the individual's personal use.
- (6) The rules may prescribe circumstances in which the introduction of an industrial chemical by an individual is taken not to be for the individual's personal use for the purposes of subsection (5).

**Part 2** Registration of industrial chemical introducers

**Division 1** Simplified outline of this Part

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**Part 2—Registration of industrial chemical  
introducers**

**Division 1—Simplified outline of this Part**

**12 Simplified outline of this Part**

An introducer must be registered on the Register of Industrial Chemical Introducers for a registration year before introducing an industrial chemical during that year. Penalties apply if a person introduces an industrial chemical without being registered.

A registration charge is payable for each registration year when the person applies for registration for that year.

## **Division 2—Registration**

### **13 Introducers must be registered**

- (1) A person contravenes this subsection if:
- (a) the person introduces an industrial chemical in a registration year; and
  - (b) at the time the industrial chemical was introduced the person was not registered for the registration year.

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 500 penalty units.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

### **14 Establishment of Register**

- (1) The Executive Director must establish and keep a register to be called the Register of Industrial Chemical Introducers.
- (2) Subject to subsection 15(2), the Register must be made publicly available on the AICIS website.

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- (3) The Register is not a legislative instrument.

### 15 Content of Register

- (1) The Register must contain the following for each registered person:
- (a) the person's name and address;
  - (b) the person's registration number.
- (2) However, a person's address must not be made publicly available.

### 16 Applying for registration

- (1) Subject to subsection (3), a person may apply to the Executive Director to be registered for a registration year.
- Note: For general requirements relating to applications: see section 167.
- (2) An application for registration for a registration year must be accompanied by the amount of registration charge payable by the person for the registration year under section 21.
- (3) An application under subsection (1) cannot be made by a person if the person's registration has been cancelled on the grounds mentioned in paragraph 19(2)(b) or (c) in that registration year or any of the 3 previous registration years.

### 17 Grant of registration

- (1) The Executive Director must grant an application for registration for a registration year if the Executive Director is satisfied that the application is in accordance with sections 16 and 167.
- (2) If the Executive Director grants an application, the Executive Director must:
- (a) give written notice to the person of the decision to grant the registration; and
  - (b) allocate a registration number to the person; and
  - (c) enter on the Register the information mentioned in section 15 for the person.

- (3) Subject to subsection (4), a person's registration takes effect at the start of the registration year to which it relates.
- (4) If a person makes an application for registration after the start of the registration year to which the registration relates, the person's registration takes effect from the day the registration is granted.

### **18 Correction of register**

- (1) A person may notify the Executive Director in writing of any corrections required to information included in the Register for that person.
- (2) The Executive Director must correct the Register if the Executive Director is satisfied that any information recorded for a person is incorrect.

### **19 Cancellation of registration**

#### *Cancellation on registered person's initiative*

- (1) The Executive Director must cancel a person's registration for a registration year if the person requests, by written notice, the Executive Director to do so.

#### *Cancellation on Executive Director's initiative*

- (2) The Executive Director may cancel a person's registration for a registration year if the Executive Director is satisfied that:
  - (a) the person's name was entered on the Register by mistake; or
  - (b) the person has, in that registration year or in any of the 3 previous registration years, been convicted of an offence, or subject to a civil penalty, under this Act; or
  - (c) the person has made a statement, or given a document or information, to the Executive Director in connection with the person's registration that was false or misleading in a material particular.

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- (3) The Executive Director must give written notice of the proposed cancellation, and the reasons for the cancellation, to the person.
- (4) The person may make a written submission to the Executive Director about the proposed cancellation.
- (5) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (6) After considering any submissions made during that period the Executive Director must decide to:
  - (a) cancel the person's registration; or
  - (b) not cancel the person's registration.
- (7) The Executive Director must give written notice of the decision to the person.



## **Division 3—Registration charge**

### **20 Registration charge**

- (1) A person who is registered for a registration year is liable to pay registration charge.
- (2) Registration charge payable by a person is a debt due and payable by the person to the Commonwealth and may be recovered by the Commonwealth in a court of competent jurisdiction.

### **21 Amount of registration charge**

The amount of registration charge payable by a person in relation to a registration year is the amount prescribed:

- (a) so far as the charge is a duty of customs within the meaning of section 55 of the Constitution—by regulations made for the purposes of section 7 of the *Industrial Chemicals Charges (Customs) Act 2019*; and
- (b) so far as the charge is a duty of excise within the meaning of section 55 of the Constitution—by regulations made for the purposes of section 7 of the *Industrial Chemicals Charges (Excise) Act 2019*; and
- (c) so far as the charge is neither a duty of customs nor a duty of excise within the meaning of section 55 of the Constitution—by regulations made for the purposes of section 7 of the *Industrial Chemicals Charges (General) Act 2019*.

### **22 Other matters relating to registration charge**

The rules may provide for other matters relating to the collection and recovery of registration charge, including (but not limited to) the following:

- (a) the recovery of underpayments of registration charge;
- (b) the refund of overpayments of registration charge.

## **Part 3—Categorisation and assessment of industrial chemicals**

### **Division 1—Simplified outline of this Part**

#### **23 Simplified outline of this Part**

This Part sets out the categories of introduction and the requirements that must be met for each category.

Penalties apply if a person introduces an industrial chemical without meeting the requirements of one of these categories.

There are 6 categories: listed introductions, exempted introductions, reported introductions, assessed introductions, commercial evaluation introductions and exceptional circumstances introductions.

This Part sets out how to apply to the Executive Director for an assessment certificate or commercial evaluation authorisation and how exceptional circumstances authorisations are issued.

It also sets out how changes may be made to certificates and authorisations.

## **Division 2—Introduction categories**

### **24 Introductions must be authorised**

- (1) A person contravenes this subsection if:
- (a) the person introduces an industrial chemical; and
  - (b) the introduction is not authorised by any of the following:
    - (i) section 25 (which deals with listed introductions);
    - (ii) section 26 (which deals with exempted introductions);
    - (iii) section 27 (which deals with reported introductions);
    - (iv) section 28 (which deals with assessed introductions);
    - (v) section 29 (which deals with commercial evaluation introductions);
    - (vi) section 30 (which deals with exceptional circumstances introductions).

Note: The introduction of an industrial chemical may also be subject to prohibitions or conditions based on Australia's obligations under international agreements or arrangements: see Division 3 of Part 9.

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 500 penalty units.

#### *Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 500 penalty units.

## 25 Listed introductions

An introduction of an industrial chemical by a person is authorised by this section if:

- (a) the industrial chemical is listed on the Inventory; and
- (b) the introduction is in accordance with the terms of the Inventory listing.

Note: Part 5 deals with the Inventory and the process for getting an industrial chemical listed on the Inventory.

## 26 Exempted introductions

(1) An introduction of an industrial chemical by a person is authorised by this section if the introduction is an exempted introduction in accordance with rules made for the purposes of subsection (2).

(2) The rules may prescribe the following:

- (a) circumstances in which an introduction of an industrial chemical is an *exempted introduction*;
- (b) circumstances in which an introduction of an industrial chemical is not an *exempted introduction*.

Note: An exempted introduction is an industrial chemical introduction that poses a very low risk to human health and the environment.

(3) Without limiting subsection (2), the rules may prescribe different circumstances for different industrial chemicals, or classes of industrial chemicals, and may prescribe circumstances relating to any of the following:

- (a) the hazards of the industrial chemical to human health;
- (b) the hazards of the industrial chemical to the environment;
- (c) the exposure of humans to the industrial chemical from the introduction and use of the industrial chemical;
- (d) the exposure of the environment to the industrial chemical from the introduction and use of the industrial chemical;

- (e) the volume of the industrial chemical that is introduced in a period.

## 27 Reported introductions

- (1) An introduction of an industrial chemical by a person is authorised by this section if:
  - (a) the introduction is a reported introduction in accordance with rules made for the purposes of subsection (2); and
  - (b) a pre-introduction report for the industrial chemical has been given to the Executive Director in accordance with section 97; and
  - (c) the introduction is in accordance with the terms of the pre-introduction report.

Note: For information and reporting obligations, including pre-introduction reports: see Part 6.

- (2) The rules may prescribe the following:
  - (a) circumstances in which an introduction of an industrial chemical is a **reported introduction**;
  - (b) circumstances in which an introduction of an industrial chemical is not a **reported introduction**.

Note: A reported introduction is an industrial chemical introduction that poses a low risk to human health or the environment.

- (3) Without limiting subsection (2), the rules may prescribe different circumstances for different industrial chemicals, or classes of industrial chemicals, and may prescribe circumstances relating to any of the following:
  - (a) the hazards of the industrial chemical to human health;
  - (b) the hazards of the industrial chemical to the environment;
  - (c) the exposure of humans to the industrial chemical from the introduction and use of the industrial chemical;
  - (d) the exposure of the environment to the industrial chemical from the introduction and use of the industrial chemical;

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- (e) whether the introduction of the industrial chemical has been the subject of an assessment (however described) by an international body;
- (f) the volume of the industrial chemical that is introduced in a period.

**28 Assessed introductions**

An introduction of an industrial chemical by a person is authorised by this section if:

- (a) the person is the holder of an assessment certificate, or is covered by an assessment certificate, for the industrial chemical; and
- (b) the introduction is in accordance with the terms of the assessment certificate.

Note 1: An assessed introduction is generally an industrial chemical introduction that poses a medium to high risk to human health or the environment. If an introduction of an industrial chemical does not fall within the definition of an exempted or reported introduction and is not listed on the Inventory, it is generally an assessed introduction.

Note 2: A person can choose to apply for an assessment certificate for an introduction that would otherwise be authorised under another section in this Division: see Division 3.

**29 Commercial evaluation introductions**

An introduction of an industrial chemical by a person is authorised by this section if:

- (a) the person is the holder of a commercial evaluation authorisation for the industrial chemical; and
- (b) the introduction is in accordance with the terms of the commercial evaluation authorisation.

**30 Exceptional circumstances introductions**

An introduction of an industrial chemical by a person is authorised by this section if:

- (a) the person is the holder of an exceptional circumstances authorisation for the industrial chemical; and
- (b) the introduction is in accordance with the terms of the exceptional circumstances authorisation.

## Division 3—Assessment certificates

### Subdivision A—Obtaining a certificate

#### 31 Applying for a certificate

- (1) A person may apply to the Executive Director for an assessment certificate for the introduction of an industrial chemical.

Note 1: For general requirements relating to applications: see section 167.

Note 2: An application for the proper name or end use for an industrial chemical to be treated as confidential business information may be made at the time of applying for an assessment certificate: see section 105.

- (2) A joint application under subsection (1) may be made by 2 or more persons.
- (3) An application under subsection (1) cannot be made for an industrial chemical that is listed on the Inventory.

Note: If an introduction of an industrial chemical is not within the terms of the Inventory listing for the industrial chemical, the introduction may otherwise be authorised as an exempted or reported introduction, or an application may be made to vary the terms of the Inventory listing: see sections 26, 27 and 88.

#### 32 Executive Director must consider application

- (1) The Executive Director must consider the application in accordance with this Subdivision.
- (2) A decision on the application must be made under subsection 37(1) within the following period (the *consideration period*) after the day the application is made:
- (a) unless paragraph (b) or (c) applies—70 working days;
  - (b) unless paragraph (c) applies—if the rules prescribe a number of working days for that type of application, that number of working days;



- (c) if the Executive Director and each applicant agree to a number of working days—that number of working days.

Note: For circumstances affecting the calculation of the consideration period: see section 169.

- (3) In considering the application, the Executive Director must have regard to the following:
- (a) any risks to human health or the environment associated with the proposed introduction or use of the industrial chemical;
  - (b) whether any conditions of a kind mentioned in subsection 38(2) are necessary to manage any such risks;
  - (c) any further information provided in accordance with section 33 or subsection 167(4);
  - (d) any advice given by a prescribed body in accordance with section 34;
  - (e) any advice given by the Gene Technology Regulator in accordance with section 35;
  - (f) any submissions made by an applicant in accordance with section 36.

### **33 Executive Director may request further information**

- (1) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.
- (2) The information must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (3) If the requested information is not provided within the period mentioned in subsection (2), the Executive Director may take the application to be withdrawn.

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**34 Consultation with prescribed bodies**

- (1) The Executive Director must, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection if the Executive Director is considering doing either of the following:
  - (a) not issuing an assessment certificate under paragraph 37(1)(b) on the basis that the Executive Director is not satisfied that the risks to human health or the environment can be managed;
  - (b) including conditions of a kind mentioned in subsection 38(2) on the assessment certificate on the basis that the conditions are necessary to manage risks to human health or the environment.
- (2) In considering an application, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
- (3) The body may provide a response to the Executive Director.
- (4) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**35 Consultation with Gene Technology Regulator**

- (1) The Executive Director must, by written notice, seek the advice of the Gene Technology Regulator if the application relates to an industrial chemical that is a GM product or contains a GM product.
- (2) The Gene Technology Regulator may provide a response to the Executive Director.
- (3) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

### **36 Submissions on draft assessment statement**

- (1) The Executive Director must, by written notice, provide each applicant with a draft assessment statement.
- (2) An applicant may make a written submission to the Executive Director about the draft statement.
- (3) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

### **37 Issue of certificate and assessment statement**

- (1) After considering the application, the Executive Director must decide to:
  - (a) issue an assessment certificate; or
  - (b) not issue an assessment certificate.
- (2) The Executive Director must be satisfied that any risks to human health or the environment can be managed before deciding to issue an assessment certificate.
- (3) The Executive Director must not issue the assessment certificate if the Executive Director is not satisfied that any risks to human health or the environment can be managed.
- (4) To avoid doubt, the Executive Director must not issue the assessment certificate if the Executive Director is satisfied that the chemical is not an industrial chemical.
- (5) The Executive Director must give written notice of the decision and the assessment statement to each applicant.
- (6) If the decision is to issue an assessment certificate, the Executive Director must also give the assessment certificate to each applicant.
- (7) The Executive Director must publish the assessment statement on the AICIS website.

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**38 Content of certificate**

- (1) An assessment certificate must be in writing and include the following (the *terms* of the assessment certificate):
  - (a) the proper name for the industrial chemical;
  - (b) the defined scope of assessment;
  - (c) any conditions relating to the introduction or use of the industrial chemical;
  - (d) any specific requirements to provide information to the Executive Director in relation to the introduction;
  - (e) any other information prescribed by the rules for the purposes of this paragraph.
- (2) For the purposes of paragraph (1)(c) the conditions must be any of the following kinds:
  - (a) a condition on the volume of industrial chemical permitted to be introduced;
  - (b) a condition on where the industrial chemical is permitted to be introduced or used;
  - (c) a condition on the period for which the industrial chemical is permitted to be introduced.

**39 When certificate is in force**

An assessment certificate for an industrial chemical is in force for the period beginning the day notice of the issue of the certificate is given under subsection 37(5) and ending on the earliest of the following:

- (a) the day the certificate is taken to be cancelled under subsection 42(7);
- (b) the day notice of the cancellation of the assessment certificate is given under subsection 51(3) or 52(6);
- (c) if a condition of a kind mentioned in paragraph 38(2)(c) is included on the certificate—the day after the last day that the industrial chemical is permitted to be introduced in accordance with that condition;

- (d) the day the Executive Director lists the industrial chemical on the Inventory in relation to the certificate under subsection 82(1) or 83(2);
- (e) the day the Executive Director varies the listing for the industrial chemical in relation to the certificate under subsection 87(2).

### **Subdivision B—Changes to certificate holders or persons covered by a certificate**

#### **40 Applying to change persons covered**

##### *Adding persons*

- (1) A holder of an assessment certificate may apply to the Executive Director for a person to be covered by the certificate.  
Note: For general requirements relating to applications: see section 167.
- (2) The Executive Director must grant the application if satisfied that:
  - (a) the application complies with section 167; and
  - (b) the following consent to the application:
    - (i) each holder of the certificate;
    - (ii) the person to be covered by the certificate.
- (3) The Executive Director must give written notice of the decision to the following:
  - (a) each holder of the certificate;
  - (b) the person to be covered by the certificate.

##### *Removing persons*

- (4) A person covered by an assessment certificate may apply to the Executive Director to be removed as a person covered by the certificate.  
Note: For general requirements relating to applications: see section 167.

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- (5) The Executive Director must grant the application if satisfied that the application complies with section 167.
- (6) The Executive Director must give written notice of the decision to the following:
  - (a) the applicant;
  - (b) each holder of the certificate.

**41 Applying to change certificate holders**

*Adding persons*

- (1) A person may apply to the Executive Director to be added as a holder of the certificate.

Note: For general requirements relating to applications: see section 167.
- (2) The Executive Director must grant the application if satisfied that:
  - (a) the application complies with section 167; and
  - (b) the following consent to the application:
    - (i) the applicant;
    - (ii) each holder of the certificate.
- (3) The Executive Director must give written notice of the decision to the following:
  - (a) the applicant;
  - (b) each holder of the certificate.

*Removing persons*

- (4) A holder of an assessment certificate for which there are joint certificate holders may apply to the Executive Director to be removed as a holder of the certificate.

Note: For general requirements relating to applications: see section 167.
- (5) The Executive Director must grant the application if satisfied that the application complies with section 167.

- (6) The Executive Director must give written notice of the decision to the following:
- (a) the applicant;
  - (b) each holder of the certificate.

#### **42 Changing certificate holders on Executive Director's initiative**

- (1) The Executive Director may remove a person as a holder of an assessment certificate, or remove a person as a person covered by the certificate, if the Executive Director is satisfied that:
- (a) the person is not complying with the terms of the assessment certificate; or
  - (b) the person has made a statement, or given a document or information, to the Executive Director in connection with the assessment certificate that was false or misleading in a material particular.
- (2) Before removing the person, the Executive Director must give written notice of the proposed removal, and the reasons for the removal, to the person.
- (3) The person may make a written submission to the Executive Director about the proposed removal.
- (4) A submission must be made within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (5) After considering any submissions made during that period the Executive Director must decide to:
- (a) remove the person from the assessment certificate; or
  - (b) not remove the person from the assessment certificate.
- (6) The Executive Director must give written notice of the decision to the following:
- (a) the person;
  - (b) each holder of the certificate.

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- (7) If after removing the person there are no holders of the certificate, the certificate is taken to be cancelled on the day the notice is given under subsection (6).

**Subdivision C—Varying the terms of an assessment certificate**

**43 Applying for a variation of the terms of an assessment certificate**

- (1) The holder of an assessment certificate may apply to the Executive Director to vary a term of the assessment certificate.

Note 1: For general requirements relating to applications: see section 167.

Note 2: If the variation relates to the end use for an industrial chemical, an application for this end use to be treated as confidential business information may be made at the time of applying for the variation: see section 105.

- (2) If there is more than one holder of the assessment certificate, the holders of the certificate must make a joint application.

**44 Executive Director must consider application**

- (1) The Executive Director must consider the application in accordance with this Subdivision.
- (2) A decision on the application must be made under subsection 49(1) within the following period (the *consideration period*) after the day the application is made:
- (a) unless paragraph (b) or (c) applies—70 working days;
  - (b) unless paragraph (c) applies—if the rules prescribe a number of working days for that type of application, that number of working days;
  - (c) if the Executive Director and each applicant agree to a number of working days—that number of working days.

Note: For circumstances affecting the calculation of the consideration period: see section 169.

- (3) In considering the application, the Executive Director must have regard to the following:



- (a) any risks to human health or the environment associated with the proposed introduction and use of the industrial chemical;
- (b) any further information provided in accordance with section 45 or subsection 167(4);
- (c) any advice given by a prescribed body in accordance with section 46;
- (d) any advice given by the Gene Technology Regulator in accordance with section 47;
- (e) any submissions made by an applicant in accordance with section 48.

#### **45 Executive Director may request further information**

- (1) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.
- (2) The information must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (3) If the requested information is not provided within the period mentioned in subsection (2), the Executive Director may take the application to be withdrawn.

#### **46 Consultation with prescribed bodies**

- (1) The Executive Director must, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection if the Executive Director is considering doing any of the following:
  - (a) including, removing or varying a condition of a kind mentioned in subsection 38(2) on the basis that the inclusion, removal or variation is necessary to manage risks to human health or the environment;
  - (b) not varying a term of the assessment certificate under paragraph 49(1)(b) on the basis that the Executive Director is not satisfied that the risks to human health or the environment can be managed.

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- (2) In considering an application, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
- (3) The body may provide a response to the Executive Director.
- (4) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**47 Consultation with Gene Technology Regulator**

- (1) The Executive Director must, by written notice, seek the advice of the Gene Technology Regulator if the application relates to an industrial chemical that is a GM product or contains a GM product.
- (2) The Gene Technology Regulator may provide a response to the Executive Director.
- (3) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**48 Submissions on draft assessment statement**

- (1) If the Executive Director proposes to make a variation to a term of the assessment certificate, the Executive Director must, by written notice, give the draft assessment statement to each applicant.
- (2) An applicant may make a written submission to the Executive Director about the draft statement.
- (3) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**49 Issue of varied assessment certificate and assessment statement**

- (1) After considering the application, the Executive Director must decide to:

- (a) vary the term of the assessment certificate; or
  - (b) not vary the term of the assessment certificate.
- (2) The Executive Director must be satisfied that any risks to human health or the environment can be managed before deciding to vary the term of the assessment certificate.
  - (3) The Executive Director must not vary the term of the assessment certificate if the Executive Director is not satisfied that any risks to human health or the environment associated with the variation can be managed.
  - (4) The Executive Director must give written notice of the decision and the assessment statement to each applicant.
  - (5) If the decision is to vary the assessment certificate, the Executive Director must also give the varied assessment certificate to each applicant.
  - (6) The Executive Director must publish the assessment statement on the AICIS website.
  - (7) To avoid doubt, a single notice or assessment statement given under this section may cover more than one term of an assessment certificate.

## **50 Variations on Executive Director's initiative**

- (1) The Executive Director may vary a term of an assessment certificate for the introduction of an industrial chemical if:
  - (a) the Executive Director has completed an evaluation under Part 4 relating to the introduction of the industrial chemical; and
  - (b) the Executive Director has concluded as part of that evaluation that the terms of the assessment certificate may require variation to manage the risks to human health or the environment from the introduction and use of the industrial chemical; and

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- (c) the Executive Director has published the evaluation statement for the evaluation.
- (2) The Executive Director must give written notice of the proposed variation, and the reasons for the variation, to each holder of the assessment certificate.
- (3) The holder of the assessment certificate may make a written submission to the Executive Director about the proposed variation.
- (4) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (5) After considering any submissions made during that period the Executive Director must decide to:
  - (a) vary the term of the assessment certificate; or
  - (b) not vary the term of the assessment certificate.
- (6) The Executive Director must give written notice of the decision and the assessment statement to each holder of the certificate.
- (7) If the decision is to vary the assessment certificate, the Executive Director must also give the varied assessment certificate to each applicant.
- (8) The Executive Director must publish the assessment statement on the AICIS website.
- (9) To avoid doubt, a single notice or assessment statement given under this section may cover more than one term of an assessment certificate.

**Subdivision D—Cancelling an assessment certificate**

**51 Applying to cancel a certificate**

- (1) The holder of an assessment certificate may apply to the Executive Director to cancel the certificate.

Note: For general requirements relating to applications: see section 167.

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- (2) The Executive Director must grant the application if the Executive Director is satisfied that:
  - (a) the application complies with section 167; and
  - (b) each holder of the certificate consents to the application.
- (3) The Executive Director must give written notice of the decision to the following:
  - (a) the applicant;
  - (b) each holder of the certificate.

## **52 Cancelling on Executive Director's initiative**

- (1) The Executive Director may cancel an assessment certificate for an industrial chemical if:
  - (a) the Executive Director has completed an evaluation under Part 4 relating to the introduction of the industrial chemical; and
  - (b) the Executive Director has concluded as part of that evaluation that the Executive Director is not satisfied that the risks to human health or the environment from the introduction and use of the industrial chemical can be managed; and
  - (c) the Executive Director has published the evaluation statement for the evaluation.
- (2) The Executive Director must give written notice of the proposed cancellation, and the reasons for the cancellation, to each holder of the certificate.
- (3) The holder of the assessment certificate may make a written submission to the Executive Director about the proposed cancellation.
- (4) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

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- (5) After considering any submissions made during that period the Executive Director must decide to:
  - (a) cancel the assessment certificate; or
  - (b) not cancel the assessment certificate.
- (6) The Executive Director must give written notice of the decision and the assessment statement to each holder of the assessment certificate.
- (7) The Executive Director must publish the assessment statement on the AICIS website.

## **Division 4—Commercial evaluation authorisations**

### **Subdivision A—Obtaining an authorisation**

#### **53 Applying for an authorisation**

- (1) A person may apply to the Executive Director for a commercial evaluation authorisation for the introduction of an industrial chemical if:
- (a) the introduction is for the purpose of ascertaining the industrial chemical's potential for commercial application; and
  - (b) the introduction or use of the industrial chemical will not involve any of the following:
    - (i) making the industrial chemical available to the general public in circumstances prescribed by the rules for the purposes of this subparagraph;
    - (ii) release of the industrial chemical into the environment without prior treatment;
    - (iii) uncontrolled use in any workplace;
    - (iv) introduction of a volume of the industrial chemical that exceeds the volume prescribed by the rules for the purposes of this subparagraph; and
  - (c) the person does not hold, or has not previously held, an authorisation under this section for the industrial chemical and the end use for the industrial chemical; and
  - (d) the person has not made another application under this section for the industrial chemical and end use that is yet to be decided or withdrawn.

Note 1: For general requirements relating to applications: see section 167.

Note 2: An application for the proper name or end use for the industrial chemical to be treated as confidential business information may be made at the time of applying for an authorisation: see section 105.

- (2) A joint application under subsection (1) may be made by 2 or more persons.

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**54 Executive Director must consider application**

- (1) The Executive Director must consider the application in accordance with this Subdivision.
- (2) A decision on the application must be made under subsection 58(1) within the following period (the *consideration period*) after the day the application is made:
  - (a) unless paragraph (b) or (c) applies—20 working days;
  - (b) unless paragraph (c) applies—if the rules prescribe a number of working days for that type of application, that number of working days;
  - (c) if the Executive Director and each applicant agree to a number of working days—that number of working days.

Note: For circumstances affecting the calculation of the consideration period: see section 169.

- (3) In considering the application, the Executive Director must have regard to the following:
  - (a) whether the volume of the industrial chemical proposed to be introduced has been justified by the applicant for effective commercial evaluation of the industrial chemical;
  - (b) whether the time period to be covered by the authorisation has been justified by the applicant for effective commercial evaluation of the industrial chemical;
  - (c) whether any conditions relating to the introduction or use of the industrial chemical are necessary to manage any risks, or potential risks, to human health or the environment associated with the proposed introduction and use of the industrial chemical;
  - (d) whether the requirements mentioned in paragraphs 53(1)(a) and (b) will be met;
  - (e) any further information provided in accordance with section 55 or subsection 167(4);
  - (f) any advice given by a prescribed body in accordance with section 56;



- (g) any advice given by the Gene Technology Regulator in accordance with section 57.

### **55 Executive Director may request further information**

- (1) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.
- (2) The information must be given within the period specified in the notice, which must not be less than 10 working days after the day the notice is given.
- (3) If the requested information is not provided within the period mentioned in subsection (2), the Executive Director may take the application to be withdrawn.

### **56 Consultation with prescribed bodies**

- (1) In considering an application, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
- (2) The body may provide a response to the Executive Director.
- (3) The response must be given within the period specified in the notice, which must not be less than 10 working days after the day the notice is given.

### **57 Consultation with Gene Technology Regulator**

- (1) The Executive Director must, by written notice, seek the advice of the Gene Technology Regulator if the application relates to an industrial chemical that is a GM product or contains a GM product.
- (2) The Gene Technology Regulator may provide a response to the Executive Director.

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- (3) The response must be given within the period specified in the notice, which must not be less than 10 working days after the day the notice is given.

**58 Issue of authorisation**

- (1) After considering the application, the Executive Director must decide to:
  - (a) issue a commercial evaluation authorisation; or
  - (b) not issue a commercial evaluation authorisation.
- (2) The Executive Director must not issue the authorisation if the Executive Director is not satisfied that any risks to human health or the environment can be managed.
- (3) To avoid doubt, the Executive Director must not issue the commercial evaluation authorisation if the Executive Director is satisfied that the chemical is not an industrial chemical.
- (4) The Executive Director must give written notice of the decision to each applicant.
- (5) If the decision is to issue a commercial evaluation authorisation the Executive Director must also give the authorisation to each applicant.

**59 Content of authorisation**

- (1) A commercial evaluation authorisation must be in writing and include the following (the *terms* of the authorisation):
  - (a) the proper name for the industrial chemical;
  - (b) the period for which the authorisation is in force (which must not be more than 4 years);
  - (c) the end use for the industrial chemical;
  - (d) that any introduction of an industrial chemical under the authorisation must be for the purposes of commercial evaluation;

- (e) any conditions relating to the introduction or use of the industrial chemical that are necessary to manage risks to human health or the environment from the introduction or use of the industrial chemical;
  - (f) any specific requirements to provide information to the Executive Director in relation to the introduction;
  - (g) any other information prescribed by the rules for the purposes of this paragraph.
- (2) The Executive Director must publish the following on the AICIS website in relation to a commercial evaluation authorisation for an industrial chemical:
- (a) the proper name for the industrial chemical;
  - (b) that a commercial evaluation authorisation is in force for the industrial chemical;
  - (c) the end use for the industrial chemical;
  - (d) the period for which the authorisation is in force.

Note: If an application to treat the proper name or end use for the industrial chemical as confidential business information has been approved, the Executive Director must publish an AACN or generalised end use instead of the proper name or end use if prescribed circumstances apply: see section 109.

## **Subdivision B—Changing authorisation holders**

### **60 Applying to change authorisation holders**

#### *Adding persons*

- (1) A person may apply to the Executive Director to be added as a holder of a commercial evaluation authorisation.
- Note: For general requirements relating to applications: see section 167.
- (2) The Executive Director must grant the application if satisfied that:
- (a) the application complies with section 167; and
  - (b) the following consent to the application:
    - (i) the applicant;

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- (ii) each holder of the authorisation.
- (3) The Executive Director must give written notice of the decision to the following:
- (a) the applicant;
  - (b) each holder of the authorisation.

*Removing persons*

- (4) A holder of a commercial evaluation authorisation for which there are joint authorisation holders may apply to the Executive Director to remove the person as a holder of the authorisation.

Note 1: If the person is the only holder of the authorisation, the person may apply to cancel the authorisation: see section 65.

Note 2: For general requirements relating to applications: see section 167.

- (5) The Executive Director must grant the application if satisfied the application complies with section 167.
- (6) The Executive Director must give written notice of the decision to the following:
- (a) the applicant;
  - (b) each holder of the authorisation.

**61 Changing authorisation holders on Executive Director's initiative**

- (1) The Executive Director may remove a person as a holder of a commercial evaluation authorisation if the Executive Director is satisfied that:
- (a) the person is not complying with the terms of the authorisation; or
  - (b) the person has made a statement, or given a document or information, to the Executive Director in connection with the authorisation that was false or misleading in a material particular.

- (2) Before removing the person, the Executive Director must give written notice of the proposed removal, and the reasons for the removal, to the person.
- (3) The person may make a written submission to the Executive Director about the proposed removal.
- (4) A submission must be made within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (5) After considering any submissions made during that period, the Executive Director must decide to:
  - (a) remove the person as a holder of the authorisation; or
  - (b) not remove the person as a holder of the authorisation.
- (6) The Executive Director must give written notice of the decision to the following:
  - (a) the person;
  - (b) each holder of the authorisation.
- (7) If, after removing the person, there are no holders of the authorisation, the Executive Director may take the authorisation to be cancelled.

### **Subdivision C—Varying the terms of an authorisation**

#### **62 Applying for a variation of the terms of an authorisation**

- (1) The holder of a commercial evaluation authorisation may apply to the Executive Director to vary a term of the authorisation.

Note: For general requirements relating to applications: see section 167.
- (2) If there is more than one holder of the authorisation, the holders of the authorisation must make a joint application.

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**63 Issue of varied authorisation**

- (1) The Executive Director must consider the application in accordance with this Subdivision.
- (2) A decision on the application must be made under subsection (4) within the following period (the *consideration period*) after the day the application is made:
  - (a) unless paragraph (b) or (c) applies—20 working days;
  - (b) unless paragraph (c) applies—if the rules prescribe a number of working days for that type of application, that number of working days;
  - (c) if the Executive Director and each applicant agree to a number of working days—that number of working days.

Note: For circumstances affecting the calculation of the consideration period: see section 169.

- (3) In considering the application, the Executive Director must have regard to the following:
  - (a) any risks, or potential risks, to human health or the environment associated with the proposed variation;
  - (b) any further information provided in accordance with subsection 167(4).
- (4) After considering the application, the Executive Director must decide to:
  - (a) vary the term of the authorisation; or
  - (b) not vary the term of the authorisation.
- (5) The Executive Director must not issue the authorisation if the Executive Director is not satisfied that any risks to human health or the environment can be managed.
- (6) The Executive Director must give written notice of the decision to each holder of the authorisation.
- (7) To avoid doubt, a single notice under subsection (6) may cover more than one term of the authorisation.

## **64 Variations on Executive Director's initiative**

- (1) The Executive Director may vary a term of a commercial evaluation authorisation.
- (2) Before making the variation, the Executive Director must give written notice of the proposed variation, and the reasons for the variation, to each holder of the authorisation.
- (3) The holder of the authorisation may make a written submission to the Executive Director about the proposed variation.
- (4) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (5) After considering any submissions made during that period, the Executive Director must decide to:
  - (a) vary the term of the authorisation; or
  - (b) not vary the term of the authorisation.
- (6) The Executive Director must give written notice of the decision to each holder of the authorisation.
- (7) If the decision is to vary the term of the authorisation, the Executive Director must also give the varied authorisation to each holder of the authorisation.
- (8) To avoid doubt, a single notice under subsection (6) may cover more than one term of the authorisation.

## **Subdivision D—Cancelling an authorisation**

### **65 Applying to cancel an authorisation**

- (1) The holder of a commercial evaluation authorisation may apply to the Executive Director to cancel the authorisation.

Note: For general requirements relating to applications: see section 167.

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- (2) The Executive Director must grant the application if the Executive Director is satisfied that:
  - (a) the application complies with section 167; and
  - (b) each holder of the authorisation consents to the application.
- (3) The Executive Director must give written notice of the decision to each authorisation holder.

**66 Cancelling on Executive Director's initiative**

- (1) The Executive Director may cancel a commercial evaluation authorisation for the introduction of an industrial chemical if the Executive Director is not satisfied that the risks to human health or the environment from the introduction and use of the industrial chemical can be managed.
- (2) The Executive Director must give written notice of the proposed cancellation, and the reasons for the cancellation, to each holder of the authorisation.
- (3) The holder of the authorisation may make a written submission to the Executive Director about the proposed cancellation.
- (4) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (5) After considering any submissions made during that period, the Executive Director must decide to:
  - (a) cancel the commercial evaluation authorisation; or
  - (b) not cancel the commercial evaluation authorisation.
- (6) The Executive Director must give written notice of the decision to each holder of the authorisation.



## **Division 5—Exceptional circumstances authorisations**

### **67 Exceptional circumstances authorisations**

- (1) The Minister may issue an exceptional circumstances authorisation for the introduction of an industrial chemical.
- (2) Before deciding to issue the authorisation, the Minister must:
  - (a) consult with the Executive Director; and
  - (b) be satisfied that the introduction of the industrial chemical is in the public interest to address:
    - (i) significant risks to human health or the environment; or
    - (ii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates.
- (3) The authorisation must be in writing and include the following (the **terms** of the authorisation):
  - (a) the proper name for the industrial chemical;
  - (b) the period for which the authorisation is in force;
  - (c) the scope of the authorisation;
  - (d) any condition relating to the introduction or use of the industrial chemical that the Minister is satisfied is necessary to manage any risks to human health or the environment from the introduction or use of the industrial chemical;
  - (e) any specific requirements to provide information to the Executive Director in relation to the authorisation;
  - (f) any other information prescribed by the rules for the purposes of this paragraph.
- (4) The Minister must determine each holder of the authorisation and give each such person written notice of the authorisation and the authorisation.

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- (5) The Executive Director must publish the following on the AICIS website in relation to an exceptional circumstances authorisation for an industrial chemical:
- (a) the commonly known name for the industrial chemical;
  - (b) that an exceptional circumstances authorisation is in force for the industrial chemical;
  - (c) the reasons why an exceptional circumstances authorisation is necessary;
  - (d) the period for which the authorisation is in force.

## **Part 4—Evaluations initiated by Executive Director**

### **Division 1—Simplified outline of this Part**

#### **68 Simplified outline of this Part**

This Part sets out the Executive Director’s powers to initiate, at any time, evaluations of industrial chemicals and matters relating to industrial chemicals.

There are 2 separate processes for conducting evaluations. The first is for industrial chemicals that are subject to an assessment certificate. The Executive Director is required to consult with the assessment certificate holders as part of this process.

The second is for any other industrial chemicals or matters relating to industrial chemicals. The Executive Director must publish certain information on the AICIS website about a proposed evaluation.

The Executive Director must publish the outcomes of an evaluation in an evaluation statement.

An evaluation under this Part is necessary for the Executive Director to initiate variations to the terms of assessment certificates or Inventory listings.

An evaluation under this Part is also necessary for the cancellation of an assessment certificate, or removal of an Inventory listing, on the Executive Director’s initiative.

## **Division 2—Evaluations of introductions authorised by an assessment certificate**

### **69 Executive Director may initiate evaluation**

- (1) The Executive Director may initiate an evaluation of the introduction of an industrial chemical that is authorised by an assessment certificate.
- (2) The Executive Director must give written notice of the proposed evaluation, and the reasons for the evaluation, to each holder of the assessment certificate.
- (3) The notice must specify the time period within which the evaluation will be conducted.
- (4) In conducting the evaluation, the Executive Director must have regard to the following:
  - (a) any risks to human health or the environment associated with the introduction and use of the industrial chemical;
  - (b) any further information provided in accordance with section 70;
  - (c) any advice given by a prescribed body in accordance with section 71;
  - (d) any submissions made by a certificate holder in accordance with section 72.

### **70 Executive Director may require information**

- (1) The Executive Director may, by written notice given to a holder of, or a person covered by, the assessment certificate, require information to be provided for the purposes of the evaluation.
  - (2) The information must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
  - (3) A person contravenes this subsection if:
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- (a) a notice is given to the person under subsection (1); and
- (b) the person does not provide the information specified in the notice to the Executive Director within the period specified in the notice in accordance with subsection (2).

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (3).

Penalty: 300 penalty units.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 300 penalty units.

## **71 Consultation with prescribed bodies**

- (1) The Executive Director must, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection if the Executive Director is considering doing any of the following:
  - (a) including, removing or varying a condition relating to the introduction or use of the industrial chemical on the assessment certificate on the basis that the inclusion, removal or variation is necessary to manage risks to human health or the environment;
  - (b) cancelling the certificate on the basis that the Executive Director is not satisfied that the risks to human health or the environment can be managed.

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- (2) As part of the evaluation, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
- (3) The body may provide a response to the Executive Director.
- (4) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**72 Submissions on draft evaluation statement**

- (1) The Executive Director must, by written notice, provide the draft evaluation statement to each holder of the certificate.
- (2) A holder of the certificate may make a written submission to the Executive Director about the draft statement.
- (3) A submission must be given within the period specified in the notice, which must not be less than 20 working days after the day the statement is given.

**73 Issue of evaluation statement**

- (1) The Executive Director must issue an evaluation statement within the period mentioned in subsection 69(3).
- (2) An evaluation statement must be in writing and contain the following:
  - (a) the subject of the evaluation;
  - (b) the defined scope of the evaluation;
  - (c) a summary of the evaluation and any risks to human health or the environment identified during the evaluation;
  - (d) if risks have been identified—the proposed means for managing these risks including the following:
    - (i) any recommendations relating to the introduction or use of the industrial chemical;
    - (ii) any conditions of a kind mentioned in subsection 38(2);

- (iii) any specific requirements to provide information to the Executive Director as mentioned in paragraph 38(1)(d);
  - (e) any other information relating to the safe introduction and use of the industrial chemical that the Executive Director considers relevant.
- (3) The Executive Director must:
- (a) give each holder of the certificate the evaluation statement; and
  - (b) publish the evaluation statement on the AICIS website.

Note: The Executive Director may vary the terms of an assessment certificate or cancel an assessment certificate following an evaluation: see sections 50 and 52.

## **Division 3—Evaluations of other introductions or matters**

### **74 Executive Director may initiate evaluation**

- (1) The Executive Director may initiate an evaluation of matters relating to industrial chemicals (other than the introduction of an industrial chemical that is authorised by an assessment certificate).

Note: An evaluation of the introduction of an industrial chemical authorised by an assessment certificate must be conducted under Division 2.

- (2) Without limiting subsection (1), an evaluation may relate to any of the following:
- (a) an industrial chemical;
  - (b) a class of industrial chemicals;
  - (c) hazards to human health or the environment associated with an industrial chemical or class of industrial chemicals;
  - (d) exposure of humans or the environment to an industrial chemical or class of industrial chemicals;
  - (e) a use for an industrial chemical or class of industrial chemicals;
  - (f) the circumstances in which an industrial chemical or class of industrial chemicals is introduced.
- (3) If the Executive Director initiates an evaluation, the Executive Director must publish the following on the AICIS website:
- (a) the subject of the evaluation;
  - (b) the reason for the evaluation;
  - (c) the period within which the evaluation will be conducted.

### **75 Consultation to inform evaluation**

The Executive Director, when conducting an evaluation, may do any of the following:

- (a) consult with a body prescribed by the rules for the purposes of this paragraph;
- (b) conduct a public consultation process;



- (c) request a person to provide information relevant to the evaluation.

## **76 Executive Director may require information**

- (1) The Executive Director may, by written notice, require a person mentioned in subsection (2) to provide information specified in the notice if any of the following circumstances apply:
  - (a) the Executive Director has been unable to obtain the information by other means;
  - (b) the information is necessary to confirm whether or not a particular industrial chemical or class of industrial chemicals is being introduced, or is in use, in Australia;
  - (c) the information is necessary in order to establish whether there are any risks to human health or the environment associated with an industrial chemical;
  - (d) the information is necessary in order for Australia to meet its obligations under international agreements or arrangements;
  - (e) any other circumstances prescribed by the rules for the purposes of this paragraph.
- (2) For the purposes of subsection (1), the persons are:
  - (a) if the evaluation relates to a particular industrial chemical:
    - (i) all persons who introduce the industrial chemical during the period beginning 12 months before the day the notice is given and ending 12 months after that day; or
    - (ii) all persons who introduce the industrial chemical during the period mentioned in subparagraph (i) in circumstances specified in the notice; or
    - (iii) specified persons who introduce the industrial chemical during the period mentioned in subparagraph (i); or
  - (b) in any case—a person whom the Executive Director is satisfied has information relevant to the evaluation.
- (3) The Executive Director must give the notice to each person who the Executive Director is satisfied is a person mentioned in subsection (2).

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- (4) The notice must specify the period within which the information must be provided, which must not be less than 20 working days after the day the notice is given.
- (5) Before giving a notice, the Executive Director must publish on the AICIS website a statement describing the information that the Executive Director proposes to require under this section.

**77 Person must comply with requirement to provide information**

- (1) A person contravenes this subsection if:
  - (a) a notice is given to the person under section 76; and
  - (b) the person does not provide the information specified in the notice to the Executive Director within the period specified in the notice.

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

## **78 Issue of evaluation statement**

- (1) The Executive Director must issue an evaluation statement within the period mentioned in paragraph 74(3)(c).
- (2) An evaluation statement must be in writing and contain the following:
  - (a) the subject of the evaluation;
  - (b) the parameters of the evaluation;
  - (c) a summary of the evaluation and any risks to human health or the environment identified during the evaluation;
  - (d) the proposed means for managing any risks;
  - (e) any other information that the Executive Director considers relevant relating to the safe introduction and use of an industrial chemical that was considered as part of the evaluation;
  - (f) the conclusions of the evaluation.
- (3) The Executive Director must publish the evaluation statement on the AICIS website.

Note 1: The Executive Director may vary the terms of an Inventory listing or add a listing or remove a listing following an evaluation: see Part 5.

Note 2: If the Executive Director is proposing to include information in the evaluation statement for which notice has been given under section 112, an application may be made for the information to be treated as confidential business information and not published: see sections 113 and 114.

## **Part 5—Australian Inventory of Industrial Chemicals**

### **Division 1—Simplified outline of this Part**

#### **79 Simplified outline of this Part**

Industrial chemicals that are listed on the Australian Inventory of Industrial Chemicals can be introduced by any registered introducer. The introducer must comply with the terms of the listing.

Industrial chemicals for which an assessment certificate has been in force for 5 years are generally listed on the Inventory.

A holder of an assessment certificate can apply for early listing and industrial chemicals can be listed in limited other circumstances.

The terms of an Inventory listing can be varied or a listing can be removed following an evaluation by the Executive Director.

A person can also apply for variations to the terms of Inventory listings.

## **Division 2—Establishment and contents of Inventory**

### **80 Establishment of the Inventory**

- (1) The Executive Director must establish and keep an inventory of industrial chemicals to be called the Australian Inventory of Industrial Chemicals.
- (2) Subject to Subdivisions A and B of Division 4 of Part 6, the terms of the Inventory listing for each industrial chemical that is listed on the Inventory must be made publicly available on the AICIS website.

Note: Subdivisions A and B of Division 4 of Part 6 deal with approvals for information to be treated as confidential business information and not published.

- (3) The Inventory is not a legislative instrument.

### **81 Contents of the Inventory**

- (1) The Inventory must include the following (the *terms* of the Inventory listing) for each industrial chemical that is included on the Inventory:
  - (a) the CAS name and CAS number for the industrial chemical;
  - (b) the molecular formula for the industrial chemical (if defined);
  - (c) any defined scope of assessment for the industrial chemical;
  - (d) any conditions relating to the introduction or use of the industrial chemical;
  - (e) any specific requirements to provide information to the Executive Director in relation to the introduction of the industrial chemical;
  - (f) any other information relating to the industrial chemical that is prescribed by the rules for the purposes of this paragraph.

Note: If an application to treat the proper name for the industrial chemical as confidential business information has been approved, the Executive Director must publish an AACN instead of the CAS name, CAS

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number and molecular formula if prescribed circumstances apply: see section 109.

- (2) For the purposes of paragraph (1)(d), the conditions must be any of the following kinds:
- (a) a condition on the volume of industrial chemical permitted to be introduced;
  - (b) a condition on where the industrial chemical is permitted to be introduced or used;
  - (c) a condition of a kind prescribed by the rules for the purposes of this paragraph.

Note: Penalties may apply if a person fails to comply with the terms of an Inventory listing when introducing an industrial chemical: see sections 24 and 25.

- (3) The Inventory listing for an industrial chemical must also include the website address where each assessment statement (if any) or evaluation statement (if any) that has been published for the industrial chemical can be accessed.

## **Division 3—Inclusion of industrial chemicals on Inventory**

### **82 Listing on Inventory after 5 years**

- (1) Subject to subsection (4), the Executive Director must list an industrial chemical on the Inventory if:
- (a) the industrial chemical is not listed on the Inventory; and
  - (b) an assessment certificate has been issued for the industrial chemical; and
  - (c) the assessment certificate remains in force; and
  - (d) 5 years have passed since the assessment certificate was issued.

Note: If the industrial chemical has previously been listed on the Inventory, the Inventory listing must be varied in relation to any other assessment certificate for the industrial chemical that meets the requirements in paragraphs (b), (c) and (d): see section 87.

- (2) Before listing the industrial chemical on the Inventory, the Executive Director must:
- (a) give each holder of the assessment certificate written notice of the proposed listing; and
  - (b) give notice as mentioned in subsection 110(2) to any confidence holders for an approval for the proper name or end use for the industrial chemical to be treated as confidential business information; and
  - (c) if an application is made under subsection 111(1) by any of those confidence holders—ensure that either:
    - (i) a decision has been made on that application and, if the decision is to revoke the approval, that the requirements of subsection 111(10) have been met; or
    - (ii) the approval has been taken to be revoked under subsection 111(11); and
  - (d) if no application is made under subsection 111(1) by any of those confidence holders—ensure that the approval has been taken to be revoked under subsection 111(11).

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- (3) If the Executive Director lists an industrial chemical on the Inventory under subsection (1), the Executive Director must:
  - (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing;
    - (ii) the reason why the industrial chemical was listed;
    - (iii) the day the industrial chemical was listed; and
  - (b) do so within 20 working days after the day the industrial chemical is listed.
- (4) If, after the Executive Director does the things mentioned in subsection (2), the assessment certificate is no longer in force, the Executive Director must not list the industrial chemical on the Inventory.

### **83 Listing on Inventory before 5 years**

- (1) The holder of an assessment certificate for an industrial chemical may apply to the Executive Director for the industrial chemical to be listed on the Inventory, if:
  - (a) the industrial chemical is not listed on the Inventory; and
  - (b) the assessment certificate remains in force; and
  - (c) the assessment certificate does not include a condition of a kind mentioned in paragraph 38(2)(c) (which deals with the period for which an industrial chemical is permitted to be introduced); and
  - (d) 5 years have not yet passed since the assessment certificate was issued.

Note: For general requirements relating to applications: see section 167.

- (2) Subject to subsection (5), the Executive Director must list the industrial chemical on the Inventory if the Executive Director is satisfied that the application complies with section 167.
- (3) Before listing the industrial chemical on the Inventory, the Executive Director must give a written notice in accordance with subsection (4) to:



- (a) if there are any other assessment certificates in force for the industrial chemical—each holder of the other certificate; and
  - (b) if there are any confidence holders for an approval for the proper name or end use for the industrial chemical to be treated as confidential business information—each such confidence holder.
- (4) The written notice must contain the following information:
- (a) that an application has been made to list the industrial chemical on the Inventory;
  - (b) that the person may object, in writing, to the Executive Director listing the industrial chemical;
  - (c) that any objection must be given to the Executive Director within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (5) However, if an objection is made within the period specified in the notice mentioned in subsection (3), the Executive Director:
- (a) must not list the industrial chemical on the Inventory under subsection (2); and
  - (b) must notify the applicant that an objection has been made and the industrial chemical will not be listed on the Inventory.
- (6) If the Executive Director lists an industrial chemical on the Inventory, the Executive Director must:
- (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing;
    - (ii) the reason why the industrial chemical was listed;
    - (iii) the day the industrial chemical was listed; and
  - (b) do so within 20 working days after the day the industrial chemical is listed.

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**84 Listing on Inventory in other circumstances**

*Previously regulated chemical*

- (1) The Executive Director may list an industrial chemical on the Inventory if:
- (a) the industrial chemical was previously regulated under another law of the Commonwealth; and
  - (b) the Executive Director has:
    - (i) completed an evaluation under Part 4 relating to the introduction of the industrial chemical; and
    - (ii) concluded, as part of that evaluation, that the risks to human health and the environment from the introduction and use of the industrial chemical can be managed; and
  - (c) there is no assessment certificate in force for the industrial chemical; and
  - (d) the industrial chemical is currently in use in Australia.

*Misidentified chemicals*

- (2) The Executive Director may list an industrial chemical on the Inventory if:
- (a) all of the following apply:
    - (i) the Executive Director has completed an evaluation under Part 4 relating to the introduction of the industrial chemical;
    - (ii) public consultation was conducted as part of that evaluation;
    - (iii) the Executive Director concluded, as part of that evaluation, that the industrial chemical should have been listed on the Inventory instead of a listed industrial chemical that was misidentified; and
  - (b) there is no assessment certificate in force for the industrial chemical.

Note: The Executive Director may also remove the misidentified industrial chemical: see section 95.

*Notice of listing*

- (3) Before listing an industrial chemical under subsection (1) or (2), the Executive Director must:
- (a) publish on the AICIS website a notice containing the following:
    - (i) the proposed terms of the listing;
    - (ii) the reasons why the industrial chemical is proposed to be listed;
    - (iii) the day the industrial chemical is proposed to be listed;and
  - (b) do so at least 20 working days before the day mentioned in subparagraph (a)(iii).

## Division 4—Varying the Inventory

### Subdivision A—Variation on Executive Director’s initiative and variation relating to subsequent assessment certificates

#### 85 Minor variations

- (1) The Executive Director may vary a term of the Inventory listing for an industrial chemical if the Executive Director is satisfied, whether on application under this subsection or otherwise:
  - (a) that:
    - (i) there is an error or defect in the listing; or
    - (ii) the listing is incomplete, or additional information should be included in the listing; and
  - (b) the variation has no regulatory impact.

Note: For general requirements relating to applications: see section 167.

- (2) If the Executive Director varies a term of the Inventory listing for an industrial chemical under subsection (1), the Executive Director must:
  - (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing as varied;
    - (ii) the reason why the listing was varied;
    - (iii) the day the listing was varied; and
  - (b) do so within 20 working days after the day the listing is varied.

#### 86 Variations following an evaluation by the Executive Director

- (1) The Executive Director may vary a term of the Inventory listing for an industrial chemical if:

- (a) the Executive Director has completed an evaluation under Part 4 relating to the introduction of the industrial chemical; and
  - (b) public consultation was conducted as part of that evaluation; and
  - (c) the Executive Director concluded as part of that evaluation that a variation to the listing is necessary to manage the risks to human health or the environment from the introduction or use of the industrial chemical.
- (2) Before varying a term of the Inventory listing for the industrial chemical under subsection (1), the Executive Director must:
- (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing as varied;
    - (ii) the reason why the listing is to be varied;
    - (iii) the day the listing is proposed to be varied; and
  - (b) do so at least 20 working days before the day mentioned in subparagraph (a)(iii).

### **87 Variations relating to subsequent assessment certificates**

- (1) This section applies if:
- (a) an industrial chemical was listed on the Inventory under section 82 or 83 in relation to an assessment certificate; and
  - (b) another assessment certificate is in force for the industrial chemical; and
  - (c) either:
    - (i) 5 years have passed since the other assessment certificate was issued; or
    - (ii) a holder of the other assessment certificate has applied under this subparagraph to the Executive Director for a variation to the listing.

Note: For general requirements relating to applications: see section 167.

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- (2) The Executive Director may vary a term of the Inventory listing for the industrial chemical to incorporate the terms of the other assessment certificate.
- (3) Before varying a term of the Inventory listing for the industrial chemical, the Executive Director must give written notice of the proposed variation to:
  - (a) each holder of the other assessment certificate; and
  - (b) any other person prescribed by the rules for the purposes of this paragraph.
- (4) A notice under subsection (3) must contain the following:
  - (a) the terms of the listing as varied;
  - (b) the reason why the listing is to be varied;
  - (c) the day the listing is proposed to be varied.
- (5) If the Executive Director varies a term of the Inventory listing for an industrial chemical under subsection (2), the Executive Director must:
  - (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing as varied;
    - (ii) the reason why the listing was varied; and
    - (iii) the day the listing was varied; and
  - (b) do so within 20 working days after the day the listing is varied.
- (6) To avoid doubt, a single notice under this section may cover more than one term of an Inventory listing.

**Subdivision B—Variation on application**

**88 Applying for variation of listing**

A person may apply to the Executive Director to vary a term of the Inventory listing for an industrial chemical.

Note 1: For general requirements relating to applications: see section 167.

Note 2: If the variation relates to an assessment certificate that is in force for the industrial chemical, a person can apply under subparagraph 87(1)(c)(ii).

### **89 Executive Director must consider application**

- (1) The Executive Director must consider the application in accordance with this Subdivision.
- (2) A decision on the application must be made under subsection 93(1) within the following period (the *consideration period*) after the day the application is made:
  - (a) unless paragraph (b) or (c) applies—70 working days;
  - (b) unless paragraph (c) applies—if the rules prescribe a number of working days for that type of application, that number of working days;
  - (c) if the Executive Director and each applicant agree to a number of working days—that number of working days.
- (3) In considering the application, the Executive Director must have regard to the following:
  - (a) any risks to human health or the environment associated with the proposed variation to the terms of the listing;
  - (b) any further information provided in accordance with section 90 or subsection 167(4);
  - (c) any advice given by a prescribed body in accordance with section 91;
  - (d) any advice given by the Gene Technology Regulator in accordance with section 92.

### **90 Executive Director may request further information**

- (1) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.

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- (2) The information must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (3) If the requested information is not provided within the period mentioned in subsection (2), the Executive Director may take the application to be withdrawn.

**91 Consultation with prescribed bodies**

- (1) The Executive Director must, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection if the Executive Director is considering doing any of the following:
  - (a) including, removing or varying a condition of a kind mentioned in subsection 81(2) on the basis that the inclusion, removal or variation is necessary to manage risks to human health or the environment;
  - (b) not varying a term of the Inventory listing under paragraph 93(1)(b) on the basis that the Executive Director is not satisfied that the risks to human health or the environment associated with the variation can be managed.
- (2) In considering an application, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
- (3) The body may provide a response to the Executive Director.
- (4) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**92 Consultation with Gene Technology Regulator**

- (1) The Executive Director must, by written notice, seek the advice of the Gene Technology Regulator if the application relates to an industrial chemical that is a GM product or contains a GM product.



- (2) The Gene Technology Regulator may provide a response to the Executive Director.
- (3) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

### **93 Decision on application**

- (1) After considering the application, the Executive Director must decide to:
  - (a) vary the term of the Inventory listing; or
  - (b) not vary the term of the Inventory listing.
- (2) The Executive Director must be satisfied that any risks to human health or the environment can be managed before deciding to vary the term of the Inventory listing.
- (3) The Executive Director must not vary the term of the Inventory listing if the Executive Director:
  - (a) is not satisfied that any risks to human health or the environment associated with the variation can be managed; or
  - (b) is satisfied that making the variation would result in a reduction in the scope of industrial chemical introductions authorised by the listing.
- (4) The Executive Director must give written notice of the decision and the assessment statement to each applicant.
- (5) The Executive Director must publish the assessment statement on the AICIS website.
- (6) If the Executive Director varies the term of the Inventory listing for an industrial chemical, the Executive Director must:
  - (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing as varied;
    - (ii) the reason why the listing was varied;

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- (iii) the day the listing was varied; and
  - (b) do so within 20 working days after the day the listing was varied.
- (7) To avoid doubt, a single notice under this section may cover more than one term of an Inventory listing.

**Subdivision C—Variation following revocation of confidential business information approval**

**94 Variation following revocation of confidential business information approval**

- (1) The Executive Director may vary a term of the Inventory listing for an industrial chemical if:
  - (a) there is an approval for the proper name or end use for an industrial chemical to be treated as confidential business information under section 108 that relates to the listing; and
  - (b) the Executive Director decides to revoke the approval under paragraph 111(8)(a).
- (2) Before varying a term of the Inventory listing for the industrial chemical, the Executive Director must ensure the requirements mentioned in subsection 111(10) have been satisfied.
- (3) If the Executive Director varies a term of the Inventory listing for an industrial chemical under subsection (1), the Executive Director must:
  - (a) publish on the AICIS website a notice containing the following:
    - (i) the terms of the listing as varied;
    - (ii) the reason why the listing was varied;
    - (iii) the day the listing was varied; and
  - (b) do so within 20 working days after the day the listing was varied.

## **Subdivision D—Removing listed industrial chemicals**

### **95 Removing listed industrial chemicals**

- (1) The Executive Director may remove the Inventory listing for an industrial chemical if:
- (a) the Executive Director has completed an evaluation under Part 4 in relation to the introduction of the industrial chemical; and
  - (b) public consultation was conducted as part of that evaluation; and
  - (c) the Executive Director has concluded, as part of that evaluation, that:
    - (i) the Executive Director is not satisfied that the risks to human health or the environment from the introduction or use of the industrial chemical can be managed; or
    - (ii) the industrial chemical has been wrongly listed on the Inventory.

Note 1: The Executive Director may conduct public consultation as part of an evaluation under Part 4: see section 75.

Note 2: The Executive Director may add another industrial chemical to the Inventory instead of an industrial chemical that has been wrongly listed: see subsection 84(2).

- (2) Before removing the Inventory listing, the Executive Director must:
- (a) publish on the AICIS website a notice containing the following:
    - (i) the reason why the listing is to be removed;
    - (ii) the day the listing is proposed to be removed; and
  - (b) do so at least 20 working days before the day mentioned in subparagraph (a)(ii).

## Part 6—Information, reporting and confidentiality

### Division 1—Simplified outline of this Part

#### 96 Simplified outline of this Part

There are reporting requirements for persons introducing industrial chemicals. A one-off pre-introduction report must be given to the Executive Director before a person starts introducing an industrial chemical in the reported category.

Introducers must make an annual declaration to the Executive Director relating to the introductions made during a registration year and the category of those introductions.

There are reporting obligations on certain introducers to report adverse effects. Specific information obligations can also be required by an assessment certificate, commercial evaluation authorisation, exceptional circumstances authorisation or Inventory listing.

Introducers are required to keep records to support the categorisation of industrial chemicals and the Executive Director has the power to request that such information be provided to the Executive Director.

This Part sets out the circumstances in which a person may apply to have information treated as confidential business information and protected from disclosure. It also sets out the public interest test the Executive Director applies in these circumstances.

A person can apply as part of these arrangements to have an AACN or generalised end use for an industrial chemical published in lieu of the proper name or an end use for the industrial chemical.

This Part also sets out the limited circumstances under which confidential business information can be disclosed.

## Division 2—Reporting

### 96A Post-introduction declarations for exempted introductions

- (1) A person contravenes this subsection if:
  - (a) the person first introduces an industrial chemical during a registration year; and
  - (b) the introduction is an exempted introduction; and
  - (c) the person does not make the declaration mentioned in subsection (2) within 4 months after the start of the last month of that registration year.
- (2) The declaration must:
  - (a) be in the approved form; and
  - (b) contain the information prescribed by the rules for the purposes of this paragraph for the type of exempted introduction.
- (3) The rules may prescribe circumstances in which subsection (1) does not apply.

#### *Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

#### *Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

**97 Pre-introduction reports for reported introductions**

- (1) A person must give the Executive Director a report in accordance with subsection (2) if:
- (a) the person proposes to introduce an industrial chemical; and
  - (b) the proposed introduction would be a reported introduction.

Note: A reported introduction is only authorised under section 27 if the introduction is in accordance with the terms of the report. The terms of a report can be amended if necessary: see section 98.

- (2) The report must:
- (a) be in the approved form; and
  - (b) contain the information prescribed by the rules for the purposes of this paragraph for the type of reported introduction; and
  - (c) be accompanied by any fee prescribed by the rules for the purposes of this paragraph; and
  - (d) be given to the Executive Director before the person first introduces the industrial chemical.
- (3) Without limiting paragraph (2)(b), the information prescribed may include (but is not limited to) the following:
- (a) the proper name for the industrial chemical;
  - (b) the proposed end use for the industrial chemical;
  - (c) information the person had regard to in determining that the proposed introduction would be a reported introduction.
- (4) Despite paragraph (2)(d), if the report relates to a type of reported introduction prescribed by the rules for the purposes of this subsection, then:

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- (a) the information required to be contained in the report in accordance with subsection (2) that is prescribed by the rules for the purposes of this paragraph must be given to the Executive Director before the person first introduces the industrial chemical; and
  - (b) all other information required to be contained in the report in accordance with subsection (2) must be given to the Executive Director within 12 months after the day the person first introduces the industrial chemical.
- (5) The Executive Director may publish information relating to reported introductions on the AICIS website if the information is of a kind prescribed by the rules for the purposes of this subsection.

**98 Varying the terms of a pre-introduction report**

- (1) A person who gives a pre-introduction report to the Executive Director under section 97 may notify the Executive Director, in writing, of any variations to the pre-introduction report.
- (2) The Executive Director must make any changes to the pre-introduction report that are notified under subsection (1).

**99 Annual declaration for all introduction categories**

- (1) A person contravenes this subsection if:
  - (a) the person introduces an industrial chemical during a registration year; and
  - (b) the person does not make the declaration mentioned in subsection (2) within 4 months after the start of the last month of that registration year.
- (2) The declaration must:
  - (a) be in the approved form; and
  - (b) contain the information prescribed by the rules for the purposes of this paragraph.



- (3) Without limiting paragraph (2)(b), the information prescribed may include information about the categories of introductions of industrial chemicals made by the person during the year.

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

## **100 Obligation to report information about hazards**

- (1) This section applies to:
- (a) a person who holds, or is covered by, an assessment certificate for the introduction of an industrial chemical; or
  - (b) a person who has introduced an industrial chemical within the previous 12 months:
    - (i) for which there is an Inventory listing; and
    - (ii) for which there is an assessment statement or evaluation statement.
- (2) The person contravenes this subsection if:
- (a) information becomes available to the person after the most recent assessment statement or evaluation statement for the

introduction of the industrial chemical has been published;  
and

- (b) the information is about:
- (i) a hazard to human health or the environment from the introduction or use of the industrial chemical that is not identified in the most recent assessment statement or evaluation statement for the industrial chemical; or
  - (ii) a hazard to human health or the environment that is identified in the most recent assessment statement or evaluation statement for the industrial chemical and indicates an increase in the severity of the hazard; and
- (c) the person does not make the information available to the Executive Director within 20 working days after the day the information becomes available to the person.

*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 300 penalty units.

## 101 Specific obligations to provide information

### *Assessment certificates*

- (1) A person contravenes this subsection if:
- (a) the person is the holder of, or is covered by, an assessment certificate for the introduction of an industrial chemical; and
  - (b) the assessment certificate includes a specific requirement to provide information to the Executive Director as mentioned in paragraph 38(1)(d); and
  - (c) the information is not given to the Executive Director in accordance with the terms of the assessment certificate.

### *Commercial evaluation or exceptional circumstances authorisations*

- (2) A person contravenes this subsection if:
- (a) the person is the holder of a commercial evaluation authorisation or an exceptional circumstances authorisation for the introduction of an industrial chemical; and
  - (b) the authorisation includes a specific requirement to provide information to the Executive Director as mentioned in paragraph 59(1)(f) or 67(3)(e) (as the case requires); and
  - (c) the information is not given to the Executive Director in accordance with the terms of the authorisation.

### *Inventory listings*

- (3) A person contravenes this subsection if:
- (a) the person introduces an industrial chemical that is listed on the Inventory; and
  - (b) the terms of the Inventory listing for that industrial chemical include a specific requirement to provide information to the Executive Director as mentioned in paragraph 81(1)(e); and
  - (c) the information is not given to the Executive Director in accordance with the terms of the Inventory listing.

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*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: 300 penalty units.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 300 penalty units.

## **Division 3—Record keeping and information gathering**

### **102 Information required to demonstrate categorisation**

- (1) A person contravenes this subsection if:
  - (a) the person introduces an industrial chemical during a registration year; and
  - (b) the rules prescribe a requirement for the purposes of this paragraph relating to information that a person must, or must not, have regard to in determining the category of the introduction; and
  - (c) the requirement is not complied with.
- (2) A person contravenes this subsection if:
  - (a) the Executive Director requests, by written notice, the person to provide information mentioned in paragraph (1)(b); and
  - (b) the person does not provide the information to the Executive Director within 20 working days after the day the request is given.
- (3) Without limiting paragraph (1)(b), the rules may:
  - (a) prescribe different requirements for different categories of introduction; and
  - (b) prescribe a requirement that a person must obtain the approval of the Executive Director before having regard to particular information in determining the category of introduction.

#### *Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 300 penalty units.

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### *Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

### *Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 300 penalty units.

## **103 Ban on animal test data for determining category for cosmetics**

- (1) Without limiting paragraph 102(1)(b), if an industrial chemical is to be introduced for an end use solely in cosmetics, rules made for the purposes of that paragraph may include the requirement mentioned in subsection (2).
- (2) The requirement is that, when determining the category of introduction for such an industrial chemical, a person must not use animal test data obtained from tests conducted on or after 1 July 2020 in circumstances prescribed by the rules.

## **104 Record keeping for all categories**

- (1) A person contravenes this subsection if:
- (a) the person introduces an industrial chemical during a registration year; and
  - (b) the person does not comply with subsection (2), (3) or (4).
- (2) The person must keep records relating to the introduction of industrial chemicals in that registration year by the person:
- (a) that are necessary to demonstrate the following:
    - (i) each industrial chemical that the person introduced during the year;
    - (ii) the category of each of those introductions;

- (iii) the basis on which the person determined the category of the introduction;
  - (iv) the amount of registration charge payable by the person; or
  - (b) that are of a kind prescribed by the rules for the purposes of this paragraph.
- (3) The person must retain the records for 5 years beginning immediately after the end of the registration year.
- (4) If the Executive Director requires, by written notice, the person to provide information required to be kept for the purposes of subsection (2), the person must provide the information to the Executive Director within 20 working days after the day the notice is given.

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

*Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

## Division 4—Confidentiality and disclosure

### Subdivision A—Confidentiality of proper name or end use in certain circumstances

#### 105 Applying for protection

- (1) A person may apply to the Executive Director, in the following circumstances, for the proper name for an industrial chemical to be treated as confidential business information:
  - (a) in relation to an application under section 31 for an assessment certificate for the industrial chemical;
  - (b) in relation to an application under section 53 for a commercial evaluation authorisation for the industrial chemical;
  - (c) in relation to a pre-introduction report for the industrial chemical under section 97 that contains information that may be published as mentioned in subsection 97(5);
  - (d) any other circumstances prescribed by the rules for the purposes of this paragraph.

Note: For general requirements relating to applications: see section 167.

- (2) A person may apply to the Executive Director, in the following circumstances, for an end use of an industrial chemical to be treated as confidential business information:
  - (a) in relation to an application under section 31 for an assessment certificate for the industrial chemical;
  - (b) in relation to an application under section 43 to vary the end use specified in an assessment certificate for the industrial chemical;
  - (c) in relation to an application under section 53 for a commercial evaluation authorisation for the industrial chemical;



- (d) in relation to an application under section 88 to vary the end use specified in the Inventory listing for the industrial chemical;
  - (e) in relation to a pre-introduction report for the industrial chemical under section 97 that contains information that may be published as mentioned in subsection 97(5);
  - (f) any other circumstances prescribed by the rules for the purposes of this paragraph.
- (3) A joint application under subsection (1) or (2) may be made by 2 or more persons.
- (4) An application under subsection (1) or (2) must be given to the Executive Director:
- (a) at the same time as the related application or pre-introduction report mentioned in subsection (1) or (2) is given; or
  - (b) if circumstances prescribed by the rules for the purposes of this paragraph apply—at such other time prescribed by the rules for those circumstances.
- (5) In considering an application under subsection (1) or (2), the Executive Director must have regard to:
- (a) whether publication or disclosure of the proper name or end use (as the case requires) for the industrial chemical could reasonably be expected to substantially prejudice the commercial interests of an applicant; and
  - (b) whether the prejudice outweighs the public interest in the publication of the proper name or end use (as the case requires) for the industrial chemical; and
  - (c) any further information provided in accordance with section 106 or subsection 167(4); and
  - (d) any advice given by a prescribed body in accordance with section 107.

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**106 Executive Director may request further information**

- (1) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.
- (2) The information must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (3) If the requested information is not provided within the period mentioned in subsection (2), the Executive Director may take the application to be withdrawn.

**107 Consultation with prescribed bodies**

- (1) In considering the application, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
- (2) The body may provide a response to the Executive Director.
- (3) The response must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.

**108 Decision on application**

- (1) After considering the application, the Executive Director must decide to:
  - (a) approve the application; or
  - (b) not approve the application.
- (2) The Executive Director must give written notice of the decision to each applicant.
- (3) If the decision is to approve an application to treat the proper name for an industrial chemical as confidential business information, the notice must include the following:

- (a) the AACN determined by the Executive Director for the industrial chemical;
- (b) the circumstances in which the AACN will be published in lieu of the proper name (including the CAS name, CAS number or molecular formula for the industrial chemical).

Note: The rules may prescribe circumstances in which an AACN must be published instead of the proper name for an industrial chemical: see subsection 109(1).

- (4) If the decision is to approve an application to treat the end use for an industrial chemical as confidential business information, the notice must include the following:
  - (a) the generalised end use determined by the Executive Director for the industrial chemical;
  - (b) the circumstances in which the generalised end use will be published in lieu of the end use for the industrial chemical.

Note: The rules may prescribe circumstances in which a generalised end use must be published instead of the end use for an industrial chemical: see subsection 109(2).

- (5) If the decision is to not approve the application, the Executive Director must not publish the proper name or end use (as the case requires) for the industrial chemical unless the reconsideration and review rights under section 166 in relation to the decision have been exhausted or have expired.
- (6) A notice including an AACN determined under paragraph (3)(a), or a generalised end use determined under paragraph (4)(a), is not a legislative instrument.

### **109 When an AACN or generalised end use must be used**

- (1) The Executive Director must, during the period mentioned in subsection (3), publish an AACN for an industrial chemical in lieu of the proper name (including the CAS name, CAS number or molecular formula) for the industrial chemical if:
  - (a) the Executive Director approves an application made under subsection 105(1) for the proper name for the industrial

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- chemical to be treated as confidential business information;  
and
- (b) circumstances prescribed by the rules for the purposes of this paragraph apply.
- (2) The Executive Director must, during the period mentioned in subsection (3), publish a generalised end use for an industrial chemical in lieu of the end use for an industrial chemical if:
- (a) the Executive Director approves an application made under subsection 105(2) for the end use for the industrial chemical to be treated as confidential business information; and
- (b) circumstances prescribed by the rules for the purposes of this paragraph apply.
- (3) The period:
- (a) begins on the day notice of the approval is given under subsection 108(2); and
- (b) ends on the day:
- (i) notice of revocation of the approval is given under subsection 111(9); or
- (ii) the approval is taken to be revoked under subsection 111(11).
- (4) This section applies:
- (a) subject to Subdivision C; and
- (b) despite any other provision of this Act which requires the proper name (including the CAS name, CAS number or molecular formula) or end use (as the case requires) for the industrial chemical to be published.
- (5) To avoid doubt, nothing in this section is taken to change the terms of an assessment certificate, a commercial evaluation authorisation, an Inventory listing or a pre-introduction report.

**110 Notice of review of protection**

- (1) This section applies if the Executive Director has approved an application under subsection 108(1) for the proper name or end use
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for an industrial chemical to be treated as confidential business information and any of the following circumstances apply:

- (a) 5 years have passed since notice of the approval was given under subsection 108(2) and either:
    - (i) the Executive Director is proposing to list the industrial chemical on the Inventory under section 82; or
    - (ii) the industrial chemical has been listed on the Inventory under section 83;
  - (b) 5 years have passed since the Executive Director has reviewed the approval under this section and given notice not to revoke the approval under subsection 111(9);
  - (c) circumstances prescribed by the rules for the purposes of this paragraph.
- (2) The Executive Director must give written notice to the following (**confidence holder**):
    - (a) each holder of the approval;
    - (b) if circumstances prescribed by the rules apply—each other person prescribed by the rules for those circumstances.
  - (3) The notice must state that the approval will be revoked unless a confidence holder makes an application under section 111.

### **111 Applying for continued protection**

- (1) A confidence holder mentioned in subsection 110(2) may make an application to the Executive Director to continue the approval.

Note: For general requirements relating to applications: see section 167.
- (2) An application must be made within the period specified in the notice under subsection 110(2), which must not be less than 20 working days after the day the notice is given.
- (3) In considering the application, the Executive Director must have regard to the following:
  - (a) whether publication of the proper name or end use (as the case requires) for the industrial chemical could reasonably be

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- expected to substantially prejudice the commercial interests of the applicant;
- (b) whether the prejudice outweighs the public interest in the publication of the proper name or end use (as the case requires) for the industrial chemical;
  - (c) any further information provided in accordance with subsection (7) of this section, or subsection 167(4);
  - (d) any advice given by a prescribed body in accordance with subsection (7) of this section.
- (4) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.
  - (5) In considering the application, the Executive Director may, by written notice, seek the advice of a body prescribed by the rules for the purposes of this subsection.
  - (6) The body may provide a response to the request.
  - (7) Information under subsection (4), or a response under subsection (6), must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
  - (8) After considering the application, the Executive Director must decide to:
    - (a) revoke the approval; or
    - (b) not revoke the approval.
  - (9) The Executive Director must give written notice of the decision to the following:
    - (a) the applicant;
    - (b) each confidence holder mentioned in subsection 110(2).
  - (10) If the decision is to revoke the approval, the Executive Director must not publish the proper name (including the CAS name, CAS number or molecular formula) or end use (as the case requires) for the industrial chemical unless the reconsideration and review rights

under section 166 in relation to the decision have been exhausted or have expired.

- (11) If no application is made within the period specified in the notice under subsection 110(2) the approval is taken to be revoked on the day after the end of that period.

Note: If the approval related to an industrial chemical for which there is an Inventory listing, the Executive Director may vary the terms of the Inventory listing to include the proper name or end use for the industrial chemical: see section 94.

### **Subdivision B—Confidentiality of information in other circumstances**

#### **112 Providing notice of intention to apply for protection**

- (1) A person who gives information to the Executive Director (whether under a requirement under this Act or otherwise) in relation to an industrial chemical may give notice, in the approved form, to the Executive Director:
- (a) that the information is to be subject to this Subdivision; and
  - (b) nominating the person to whom the Executive Director must give any notice under section 113 in relation to the information.
- (2) The notice must be given at the same time as the information is given to the Executive Director.
- (3) The Executive Director must not publish information for which notice has been given under this section other than in accordance with section 113 or 114.

#### **113 Notice of intention to publish information must be given**

- (1) If the Executive Director proposes to publish the information, the Executive Director must give written notice to the person nominated in the notice under subsection 112(1).

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- (2) The person may apply to the Executive Director for the information to be treated as confidential business information.

Note: For general requirements relating to applications: see section 167.

- (3) An application must be made within the period specified in the notice under subsection (1), which must not be less than 20 working days after the day the notice is given.
- (4) A joint application under subsection (2) may be made by 2 or more persons.
- (5) If no application is made within the period specified in the notice under subsection (1), the Executive Director may publish the information.

**113A Executive Director may request further information**

- (1) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.
- (2) The information must be given within the period specified in the notice, which must not be less than 20 working days after the day the notice is given.
- (3) If the requested information is not provided within the period mentioned in subsection (2), the Executive Director may take the application to be withdrawn.

**114 Decision on application**

- (1) In considering the application, the Executive Director must have regard to:
- (a) whether publication of the information could reasonably be expected to substantially prejudice the commercial interests of an applicant; and
  - (b) whether the prejudice outweighs the public interest in the publication of the information.



- (2) After considering the application, the Executive Director must decide to:
  - (a) approve the application; or
  - (b) not approve the application.
- (3) The Executive Director must not approve an application to protect any of the following information:
  - (a) information for which a person could apply for protection under section 105;
  - (b) physical and chemical data about an industrial chemical that does not reveal the industrial chemical's composition;
  - (c) summaries of data relating to risks to human health or the environment from the introduction or use of the industrial chemical.
- (4) The Executive Director must give written notice of the decision to each applicant.
- (5) If the decision is to not approve the application, the Executive Director must not publish the information unless the reconsideration and review rights under section 166 in relation to the decision have been exhausted or have expired.

### **Subdivision C—Disclosure of information**

#### **115 Disclosing information**

- (1) A person contravenes this subsection if:
  - (a) the person is, or has been, an entrusted person; and
  - (b) the person has obtained information in his or her capacity as an entrusted person; and
  - (c) the information is protected information; and
  - (d) the person discloses the information to another person; and
  - (e) the disclosure is not authorised by, or in compliance with a requirement under:
    - (i) this Act or another law of the Commonwealth; or

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- (ii) a law of a State or Territory prescribed by the rules for the purposes of this paragraph.

*Entrusted person*

- (2) Each of the following is an ***entrusted person***:
  - (a) the Executive Director;
  - (b) a person made available to assist the Executive Director under section 153 or 154;
  - (c) the Secretary of the Department;
  - (d) an APS employee in the Department;
  - (e) any other person employed or engaged by the Department;
  - (f) a person employed, under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of the Minister.

*Protected information*

- (3) The following is ***protected information***:
  - (a) the proper name or end use for an industrial chemical if an application to treat the proper name or end use as confidential business information is pending or has been approved under paragraph 108(1)(a);
  - (b) information for which an application to treat the information as confidential business information is pending or has been approved under paragraph 114(2)(a);
  - (c) information for which notice has been given under subsection 112(1) and either of the following apply:
    - (i) a notice is yet to be given under subsection 113(1) in relation to the information;
    - (ii) if such a notice has been given, the period specified in the notice for making an application under subsection 113(2) has not expired.

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

*Implied freedom of political communication*

- (7) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

**116 Disclosure in the course of exercising powers, or performing functions or duties**

An entrusted person may disclose protected information if the information is disclosed in the course of exercising powers, or performing functions or duties, under this Act.

**117 Disclosure to certain other entities**

- (1) The Executive Director may disclose protected information to any of the entities mentioned in subsection (2) if the Executive Director is satisfied that the protected information will assist the entity to exercise its powers, or perform its functions or duties.

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- (2) The entities are the following:
- (a) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
  - (b) a State or Territory government, agency or authority prescribed by the rules for the purposes of this paragraph;
  - (c) an international government, agency or authority prescribed by the rules for the purposes of this paragraph.
- (3) A person contravenes this subsection if:
- (a) the person is, or has been, an official of an entity mentioned in subsection (2); and
  - (b) protected information has been disclosed to the entity under subsection (1); and
  - (c) the person has obtained the information in the person's capacity as an official of that entity; and
  - (d) the person discloses the information other than for the purpose of the entity exercising the powers, or performing the functions or duties for which the information was disclosed to the entity under subsection (1).

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (3).

Penalty: 300 penalty units.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 300 penalty units.

### **118 Disclosure with consent**

An entrusted person may disclose protected information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

### **119 Disclosure of publicly available information**

An entrusted person may disclose protected information if the information has already been lawfully made available to the public.

### **120 Disclosure to a bona fide introducer**

- (1) An entrusted person may disclose protected information to a person to whom subsection (2) applies.
- (2) This subsection applies to a person if the person requests the Executive Director, in writing, to disclose protected information relating to an industrial chemical to the person in circumstances where:
  - (a) the industrial chemical is listed on the Inventory; and
  - (b) the Executive Director is satisfied that:
    - (i) the person intends to introduce the industrial chemical; and
    - (ii) the disclosure is necessary for the safe introduction and use of the industrial chemical.

### **121 Disclosure to person to whom protected information relates**

An entrusted person may disclose protected information to the person to whom the protected information relates.

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**122 Disclosure to person from whom protected information was obtained**

An entrusted person may disclose protected information to the person from whom the information was obtained.

**123 Disclosure to a Court, tribunal etc.**

An entrusted person may disclose protected information, or a document containing protected information:

- (a) for the purposes of proceedings before:
  - (i) a court; or
  - (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; or
- (b) in accordance with an order of:
  - (i) a court; or
  - (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

**124 Disclosure for the purposes of law enforcement**

- (1) The Executive Director may disclose protected information to an agency referred to in subsection (2) if:
  - (a) the Executive Director reasonably believes that the disclosure of the information is necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - (iii) the protection of the public revenue; and
  - (b) the protected information is disclosed for the purposes of that enforcement or protection.
- (2) The agencies to which the Executive Director may disclose protected information under this section are:

- (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
- (b) the Australian Federal Police; or
- (c) the police force or police service of a State or Territory; whose functions include that enforcement or protection.

### **125 Disclosure to reduce serious risk to public health**

The Executive Director may disclose protected information if:

- (a) the Executive Director reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to public health; and
- (b) the disclosure is for the purposes of preventing or lessening that risk.

### **126 Disclosure to reduce serious risk to the environment**

The Executive Director may disclose protected information if:

- (a) the Executive Director reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to the environment; and
- (b) the disclosure is for the purposes of preventing or lessening that risk.

**Part 7** Enforcement

**Division 1** Simplified outline of this Part

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**Part 7—Enforcement**

**Division 1—Simplified outline of this Part**

**127 Simplified outline of this Part**

The Executive Director and authorised inspectors have monitoring, inspection and enforcement powers under the Regulatory Powers Act to ensure this Act is being complied with.

The Regulatory Powers Act creates a framework for monitoring and investigating compliance with this Act, as well as providing for the enforcement of civil penalty provisions, and the use of infringement notices, enforceable undertakings and injunctions.

This Part provides for the application of the Regulatory Powers Act in relation to these matters.



## **Division 2—Monitoring and investigation powers**

### **128 Monitoring powers**

#### *Provisions subject to monitoring*

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
  - (a) the provisions of this Act;
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

#### *Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

#### *Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
  - (a) there are no related provisions; and
  - (b) the Executive Director and each authorised inspector is an authorised applicant; and
  - (c) the Executive Director and each authorised inspector is an authorised person; and
  - (d) an issuing officer (as defined in section 9 of this Act) is an issuing officer; and

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- (e) the Executive Director is the relevant chief executive; and
- (f) each relevant court (as defined in section 9 of this Act) is a relevant court.

*Additional monitoring powers*

- (4) For the purposes of Part 2 of the Regulatory Powers Act, the additional powers mentioned in subsection (5) are also taken to be monitoring powers for the purposes of determining:
  - (a) whether a provision mentioned in subsection (1) has been, or is being, complied with; or
  - (b) the correctness of information mentioned in subsection (2).
- (5) The additional monitoring powers are the powers to take and keep samples of any substance at any premises entered under section 18 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsection (1) or the information mentioned in subsection (2).

*Persons assisting*

- (6) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

*Use of force in executing a warrant*

- (7) In executing a monitoring warrant:
  - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

## 129 Investigation powers

### *Provisions subject to investigation*

- (1) The following provisions are subject to investigation under Part 3 of the Regulatory Powers Act:
- (a) an offence against this Act;
  - (b) a civil penalty provision of this Act;
  - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

### *Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) there are no related provisions; and
  - (b) the Executive Director and each authorised inspector is an authorised applicant; and
  - (c) the Executive Director and each authorised inspector is an authorised person; and
  - (d) an issuing officer (as defined in section 9 of this Act) is an issuing officer; and
  - (e) the Executive Director is the relevant chief executive; and
  - (f) each relevant court (as defined in section 9 of this Act) is a relevant court.

### *Persons assisting*

- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

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*Use of force in executing a warrant*

- (4) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

## **Division 3—Civil penalty provisions, infringement notices and injunctions**

### **130 Civil penalty provisions**

#### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### *Authorised applicant and relevant court*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act:
  - (a) the Executive Director and each authorised inspector is an authorised applicant; and
  - (b) each relevant court (as defined in section 9 of this Act) is a relevant court.

### **131 Infringement notices**

#### *Provisions subject to an infringement notice*

- (1) A strict liability offence against this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

#### *Infringement officer and relevant chief executive*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):

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- (a) the Executive Director and each authorised inspector is an infringement officer; and
- (b) the Executive Director is the relevant chief executive.

### 132 Enforceable undertakings

*Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

*Authorised person and relevant court*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):
  - (a) the Executive Director and each authorised inspector is an authorised person; and
  - (b) each relevant court (as defined in section 9 of this Act) is a relevant court.

*Enforceable undertaking must be published on the AICIS website*

- (3) An authorised person in relation to a provision mentioned in subsection (1) must publish an undertaking given in relation to the provision on the AICIS website.

### 133 Injunctions

*Enforceable provisions*

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
  - (a) the provisions of this Act;
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

*Authorised person and relevant court*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):
- (a) the Executive Director and each authorised inspector is an authorised person; and
  - (b) each relevant court (as defined in section 9 of this Act) is a relevant court.

*Additional matters relevant to court's power to grant injunctions*

- (3) The power of a relevant court under Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), to grant an injunction restraining a person from engaging in conduct may be exercised whether or not conduct of that kind constitutes a serious and immediate risk to human health or the environment.
- (4) The power of a relevant court under Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), to grant an injunction requiring a person to do a thing may be exercised whether or not there is a serious and immediate risk to human health or the environment if the person refuses or fails to do that thing.
- (5) Subsections (3) and (4) are in addition to, and do not limit, subsections 124(1) and (2) of the Regulatory Powers Act.

### **134 Extension to external Territories**

A Part of the Regulatory Powers Act, as the Part applies in relation to a provision of this Act mentioned in this Part, extends to every external Territory to which the provision extends.

## Division 4—Miscellaneous

### 135 Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct rule provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

### 136 Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

### 137 Appointment of authorised inspectors

- (1) The Executive Director may, in writing, appoint an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, as an authorised inspector for the purposes of this Part.
- (2) The Executive Director must not appoint a person as an authorised inspector unless the Executive Director is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an authorised inspector.



- (3) An authorised inspector must, in exercising powers as such, comply with any directions of the Executive Director.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **138 Delegations by relevant chief executive**

- (1) The Executive Director may, in writing, delegate all or any of the relevant chief executive powers and functions mentioned in subsection (2) to an authorised inspector.
- (2) The powers and functions that may be delegated are:
  - (a) powers under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection 128(1) and the information mentioned in subsection 128(2); and
  - (b) powers under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection 129(1); and
  - (c) powers under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in subsection 131(1); and
  - (d) powers and functions under the Regulatory Powers Act that are incidental to the powers mentioned in paragraphs (a) to (c).
- (3) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any directions of the relevant chief executive.

**Part 8** Administration

**Division 1** Simplified outline of this Part

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**Part 8—Administration**

**Division 1—Simplified outline of this Part**

**139 Simplified outline of this Part**

The Executive Director is appointed under, and the Australian Industrial Chemicals Introduction Scheme is established by, this Part.

This Part also contains the terms and conditions of the Executive Director and the staff assisting the Executive Director.

Provisions dealing with the Industrial Chemicals Special Account are also included in this Part.

## **Division 2—Australian Industrial Chemicals Introduction Scheme and the Executive Director**

### **140 Australian Industrial Chemicals Introduction Scheme**

The Australian Industrial Chemicals Introduction Scheme is established.

### **141 Executive Director**

There is to be an Executive Director of the Australian Industrial Chemicals Introduction Scheme.

### **142 Functions of Executive Director**

- (1) The Executive Director has the following functions:
  - (a) the functions conferred on the Executive Director by this Act;
  - (b) to promote the international harmonisation of regulatory controls or standards for industrial chemicals;
  - (c) any other function prescribed by the rules for the purposes of this paragraph;
  - (d) any other functions conferred on the Executive Director by any other Act;
  - (e) to advise the Minister about matters relating to any of the functions mentioned in paragraph (a), (b), (c) or (d).
- (2) The Secretary of the Department may require the Executive Director to perform functions or carry out duties for the Department in relation to chemicals to the extent to which they do not interfere with the performance of functions referred to in subsection (1).

## Division 3—Appointment of the Executive Director

### 143 Appointment

- (1) The Executive Director is to be appointed by the Governor-General by written instrument.
- (2) The Executive Director is to be appointed on a full-time basis.

### 144 Term of appointment

The Executive Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Executive Director may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

### 145 Acting Executive Director

The Minister may, by written instrument, appoint a person to act as the Executive Director:

- (a) during a vacancy in the office of Executive Director, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the Executive Director:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any other reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

## **Division 4—Terms and conditions for the Executive Director**

### **146 Remuneration and allowances**

- (1) The Executive Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed by the rules.
- (2) The Executive Director is to be paid the allowances that are prescribed by the rules for the purposes of this subsection.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **147 Leave of absence**

- (1) The Executive Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Executive Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **148 Outside employment**

The Executive Director must not engage in paid work outside the duties of his or her office without the Minister's approval.

### **149 Disclosure of interests**

- (1) The Executive Director must give written notice to the Minister of any interest, pecuniary or otherwise, that the Executive Director has or acquires that could conflict with the proper performance of the Executive Director's functions.

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- (2) Subsection (1) applies in addition to any rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*.

**150 Resignation of Executive Director**

- (1) The Executive Director may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

**151 Termination of appointment of Executive Director**

- (1) The Governor-General may terminate the appointment of the Executive Director:
- (a) for misbehaviour; or
  - (b) if the Executive Director is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Executive Director if:
- (a) the Executive Director:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Executive Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Executive Director engages, except with the Minister's approval, in paid work outside the duties of his or her office; or
  - (d) the Executive Director fails, without reasonable excuse, to comply with section 149.

**152 Other terms and conditions of appointment of Executive Director**

The Executive Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister in writing.

## **Division 5—Persons assisting the Executive Director**

### **153 Arrangements relating to staff of the Department**

- (1) The staff assisting the Executive Director are to be APS employees in the Department whose services are made available to the Executive Director, by the Secretary, in connection with the performance of any of the Executive Director's functions.
- (2) When performing services for the Executive Director, the persons are subject to the directions of the Executive Director.

### **154 Other persons assisting the Executive Director**

- (1) The Executive Director may also be assisted by employees of Agencies (within the meaning of the *Public Service Act 1999*) whose services are made available to the Executive Director in connection with the performance of any of the Executive Director's functions.
- (2) When performing services for the Executive Director, the employees are subject to the directions of the Executive Director.



## **Division 6—Industrial Chemicals Special Account**

### **155 Industrial Chemicals Special Account**

- (1) The Industrial Chemicals Account established by section 100A of the *Industrial Chemicals (Notification and Assessment) Act 1989* is continued in existence under this Act with the new name Industrial Chemicals Special Account.
- (2) The Industrial Chemicals Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

### **156 Credits to Industrial Chemicals Special Account**

There must be credited to the Industrial Chemicals Special Account amounts equal to the following:

- (a) amounts equal to amounts received by the Commonwealth in connection with the performance of the Executive Director's functions under this Act;
- (b) amounts equal to money received by the Commonwealth for services provided or to be provided, by or on behalf of the Commonwealth, using amounts standing to the credit of the account;
- (c) amounts equal to interest received by the Commonwealth from the investment of amounts standing to the credit of the account;
- (d) amounts equal to money received by the Commonwealth in relation to property paid for with amounts standing to the credit of the account;
- (e) amounts equal to amounts of any gifts given or bequests made for the purposes of the account;
- (f) amounts equal to receipts relating to the recovery of debts (other than debts in respect of statutory fines and penalties) by the Commonwealth that are associated with expenditure of amounts standing to the credit of the account.

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Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

**157 Purposes of the Industrial Chemicals Special Account**

The purposes of the Industrial Chemicals Special Account are as follows:

- (a) to make payments to further the objects of this Act;
- (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Executive Director's functions;
- (c) to make payments to enable the Commonwealth to participate in:
  - (i) the international harmonisation of regulatory controls or standards on industrial chemicals and other related activities; and
  - (ii) the development of international agreements and arrangements in relation to industrial chemicals;
- (d) paying any remuneration and allowances payable to any person engaged under this Act.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

## **Part 9—International agreements and arrangements**

### **Division 1—Simplified outline of this Part**

#### **158 Simplified outline of this Part**

This Part deals with the obligations that Australia has under the Rotterdam Convention, and other international agreements or arrangements regarding the movement of industrial chemicals into or out of Australia.

The Executive Director is responsible for notifying Australia's designated national authority when there are laws made, or actions taken, that have the effect of banning or severely restricting the introduction or use of an industrial chemical.

Australia's designated national authority is then responsible for providing this information to the Secretariat to comply with Australia's obligations under the Rotterdam Convention.

The Executive Director also has responsibility for gathering information in relation to other obligations Australia has under the Rotterdam Convention for Australia's designated national authority to provide to the Secretariat. Australia's designated authority may share this information with other parties to the Rotterdam Convention.

This Part also provides for the rules to prohibit the introduction or export of an industrial chemical, or impose conditions on the introduction or export of an industrial chemical, where Australia is a party to an agreement or an arrangement that deals with such prohibitions or restrictions.

## Division 2—Information exchange under the Rotterdam Convention

### Subdivision A—Notification of ban or restriction

#### 159 Notification of ban or restriction on introduction or use

*Scope*

- (1) This section relates to Australia's obligations under paragraph 1 of Article 5 of the Rotterdam Convention.

*Executive Director must notify Australia's designated national authority*

- (2) The Executive Director must notify Australia's designated national authority in writing if the Executive Director is satisfied that:
- (a) both of the following apply:
    - (i) the Executive Director has taken an action that has the effect of banning the introduction or use, or severely restricting the introduction or use, of an industrial chemical;
    - (ii) the Executive Director has taken the action on the grounds that the Executive Director is not satisfied that risks to human health or the environment associated with the introduction or use of the industrial chemical can be managed; or
  - (b) a provision of this Act or the rules has the effect of banning the introduction or use, or severely restricting the introduction or use, of an industrial chemical on the grounds that the risks to human health or the environment associated with the introduction or use of the industrial chemical cannot be managed; or
  - (c) both of the following apply:
    - (i) a State or a Territory has one or more laws that have the effect of banning the introduction or use, or severely

- restricting the introduction or use, of an industrial chemical in the State or Territory;
- (ii) the law or laws have the effect of banning the introduction or use, or severely restricting the introduction or use, of the industrial chemical in Australia on the grounds that the risks to human health or the environment associated with the introduction or use of the industrial chemical cannot be managed.
- (3) The notice must:
- (a) specify the industrial chemical; and
  - (b) contain the information set out in Annex I to the Rotterdam Convention (to the extent that the information is available); and
  - (c) be given as soon as practicable after the Executive Director is satisfied in accordance with subsection (2).

*Australia's designated national authority must notify Secretariat*

- (4) If a notice is given under subsection (2), Australia's designated national authority must:
- (a) give the Secretariat written notice of the information set out in the Executive Director's notification; and
  - (b) do so as soon as practicable, but no later than 90 days after:
    - (i) if paragraph (2)(a) applies—the day the action taken by the Executive Director takes effect; or
    - (ii) if paragraph (2)(b) applies—the first day the relevant provision or rule takes effect; or
    - (iii) if paragraph (2)(c) applies—the first day the law or laws take effect.

*Executive Director to make information available on website*

- (5) The Executive Director must, as soon as practicable after giving the notice, publish on the AICIS website a notice specifying the industrial chemical.

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- (6) The Executive Director may also publish on the AICIS website a notice setting out all or any of the information referred to in paragraph (3)(b).

**Subdivision B—Exchange of certain information**

**160 Exchange of certain information about industrial chemicals**

*Scope*

- (1) This section relates to Australia's obligations under subparagraphs 1(a) and (c) of Article 14 of the Rotterdam Convention.

*Executive Director to give information to Australia's designated national authority*

- (2) The Executive Director must:
- (a) give Australia's designated national authority such information of the kind mentioned in subparagraph 1(a) of Article 14 of the Rotterdam Convention as the Executive Director considers appropriate about a notified industrial chemical that was obtained during the 12 months ending on 1 February each year; and
  - (b) do so as soon as practicable after that day.

*Australia's designated national authority to give information to Secretariat etc.*

- (3) If information is given under subsection (2), Australia's designated national authority must:
- (a) give the Secretariat the information; and
  - (b) do so as soon as practicable after receiving the information.
- (4) Australia's designated national authority may also give a country that is a Party to the Rotterdam Convention, or the appropriate authority of such a country, all or any of that information.

## **Subdivision C—Information gathering**

### **161 Executive Director may obtain information and documents**

#### *Scope*

- (1) This section applies if the Executive Director reasonably believes that a person has information or a document that it is reasonably necessary to obtain for the purpose of Australia's compliance with its obligations under the Rotterdam Convention.

#### *Requirement*

- (2) The Executive Director may, by written notice given to the person, require the person:
  - (a) to give to the Executive Director, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Executive Director, within the period and in the manner specified in the notice, any such documents.
- (3) A period specified under subsection (2) must not be less than 10 working days after the day the notice is given.
- (4) A notice under subsection (2) must contain a statement to the effect that a person may commit an offence or be liable to a civil penalty if the person fails to comply with the notice.

### **162 Person must comply with notice under section 161**

- (1) A person contravenes this subsection if:
  - (a) the person is given a notice under section 161 requiring the person to give information or to produce a document; and
  - (b) the person does not comply with the requirement.

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

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Penalty: 300 penalty units.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Penalty: 300 penalty units.



## **Division 3—Movements of industrial chemicals into or out of Australia**

### **163 Movements of industrial chemicals into or out of Australia**

#### *Prohibited or restricted introductions or exports*

- (1) If an industrial chemical is the subject of a prescribed international agreement or a prescribed international arrangement, the rules may:
  - (a) prohibit the introduction or export of the industrial chemical;  
or
  - (b) impose conditions or restrictions to which the introduction or export of the industrial chemical are subject.
- (1A) Without limiting paragraph (1)(b), the conditions or restrictions that may be imposed include that the introduction or export of the industrial chemical must be approved by the Executive Director.
- (1B) A person may apply to the Executive Director for the approval.

#### *Executive Director must give notice before making rules*

- (2) At least 20 working days before rules are made for the purposes of subsection (1), the Executive Director must publish on the AICIS website a notice:
  - (a) identifying the prescribed international agreement or prescribed international arrangement; and
  - (b) listing the name or names by which the industrial chemical is known to the public; and
  - (c) requiring all persons who introduce the industrial chemical into, or export the industrial chemical from, Australia to give to the Executive Director information in the approved form about movements of the industrial chemical into or out of Australia.

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*Informing other countries etc.*

- (3) The Executive Director may inform any of the following persons or bodies regarding movements into or out of Australia of an industrial chemical mentioned in subsection (1):
  - (a) a country;
  - (b) the appropriate authority of a country;
  - (c) a relevant international organisation.
- (4) The Executive Director may give information under subsection (3) in such terms and on such conditions as the Executive Director thinks fit, having regard to:
  - (a) the requirements of the relevant international agreement or arrangement; and
  - (b) the interest of any person in maintaining confidentiality in relation to movements of the industrial chemical.

**164 Introducing or exporting if prohibited or restricted**

- (1) A person contravenes this subsection if:
  - (a) the person introduces or exports an industrial chemical; and
  - (b) the introduction or export of the industrial chemical is prohibited by rules made for the purposes of paragraph 163(1)(a).
- (2) A person contravenes this subsection if:
  - (a) the person introduces or exports an industrial chemical; and
  - (b) the introduction or export of the industrial chemical is subject to a condition prescribed by rules made for the purposes of paragraph 163(1)(b); and
  - (c) the person does not comply with the condition.

*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 300 penalty units.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 300 penalty units.

## Part 10—Miscellaneous

### 165 Simplified outline of this Part

This Part contains miscellaneous provisions including provisions about reconsideration of decisions by the Executive Director, review by the AAT, general requirements for applications, calculating consideration periods for applications, additional provisions about fees, protection from civil actions, use of computer programs, delegation provisions and annual reports.

This Part also contains the general rule making power.

### 166 Reconsideration and review of decisions

- (1) A decision mentioned in an item in column 1 of the following table that is made by the Executive Director under the provision mentioned in column 2 of that item is a *reviewable decision*.

Reviewable decisions		
Item	Column 1	Column 2
	Decision	Provision
1	A decision to cancel a person's registration	Paragraph 19(6)(a)
2	A decision to not issue an assessment certificate	Paragraph 37(1)(b)
3	A decision to include a condition on an assessment certificate	Paragraph 38(1)(c)
4	A decision to include on an assessment certificate a specific requirement to provide information	Paragraph 38(1)(d)
5	A decision to remove a person as a holder of a certificate or as a person covered by a certificate	Paragraph 42(5)(a)
6	A decision to not vary a term of an assessment certificate	Paragraph 49(1)(b)
7	A decision to vary a term of an assessment	Paragraph 50(5)(a)

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Decision</b>	<b>Provision</b>
	certificate on the Executive Director's initiative	
8	A decision to cancel an assessment certificate on the Executive Director's initiative	Paragraph 52(5)(a)
9	A decision to not issue a commercial evaluation authorisation	Paragraph 58(1)(b)
10	A decision to include a condition on a commercial evaluation authorisation	Paragraph 59(1)(e)
11	A decision to include a specific requirement to provide information on a commercial evaluation authorisation	Paragraph 59(1)(f)
12	A decision to remove a person as a holder of a commercial evaluation authorisation	Paragraph 61(5)(a)
13	A decision to not vary a term of a commercial evaluation authorisation	Paragraph 63(4)(b)
14	A decision to vary a term of a commercial evaluation authorisation on the Executive Director's initiative	Paragraph 64(5)(a)
15	A decision to cancel a commercial evaluation authorisation on the Executive Director's initiative	Paragraph 66(5)(a)
16	A decision to not vary the terms of the Inventory listing for an industrial chemical	Paragraph 93(1)(b)
17	A decision to not approve an application for the proper name or end use for an industrial chemical to be treated as confidential business information	Paragraph 108(1)(b)
18	A decision to revoke an approval to treat the proper name or end use for an industrial chemical as confidential business information	Paragraph 111(8)(a)
19	A decision to not approve an application for information to be treated as confidential business information	Paragraph 114(2)(b)
20	A decision under the rules that is specified in the	The provision specified

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Decision</b>	<b>Provision</b>
	rules to be a decision that is reviewable under this section	in the rules as the provision under which the decision is made

- (2) If another provision of this Act requires written notice to be given of a reviewable decision, the notice must include:
  - (a) the reasons for the decision; and
  - (b) information regarding a person’s rights to seek reconsideration or review of the decision under this section.
- (3) A person whose interests are affected by a reviewable decision may request the Executive Director to reconsider the decision.
- (4) The request must be made in writing and given to the Executive Director within 20 working days after the day on which the person was given notice of the reviewable decision, or within such longer period as the Executive Director allows.
- (5) A decision on a request must be made under subsection (6) within 70 working days after the day the request is given.
- (6) After receiving the request, the Executive Director must reconsider the decision and:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (7) The Executive Director’s decision (the **reconsidered decision**) to confirm, vary or set aside the reviewable decision takes effect:
  - (a) on the day specified in the reconsidered decision; or
  - (b) if a day is not specified—on the day on which the reconsidered decision is made.

- (8) The Executive Director must give the person written notice of the reconsidered decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

- (9) An application may be made to the AAT for review of a reconsidered decision.

### **167 General requirements for applications**

- (1) An application under this Act must:
- (a) be in the approved form; and
  - (b) contain the information required by the approved form; and
  - (c) be accompanied by any documents required by the approved form; and
  - (d) contain any information prescribed by the rules for the purposes of this paragraph; and
  - (da) subject to subsection (1B), not contain any information prescribed by the rules for the purposes of this paragraph; and
  - (e) be accompanied by any documents prescribed by the rules for the purposes of this paragraph; and
  - (f) be accompanied by any fee for the application:
    - (i) prescribed by the rules for the purposes of this paragraph; or
    - (ii) worked out in accordance with a method prescribed by the rules for the purposes of this paragraph.
- (1A) To avoid doubt:
- (a) the rules may provide for applications to be made under the rules; and
  - (b) this section applies in relation to such applications.
- (1B) The rules may provide that the restriction in paragraph (1)(da) does not apply in relation to particular information, if the inclusion of the information in the application is approved by the Executive Director.

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- (2) To avoid doubt, information or documents required to be given as part of an application under this Act or the rules may be provided to the Executive Director by a person other than the applicant.

Note: A person other than the applicant who provides information or documents to the Executive Director in connection with an application may apply or give notice for that information to be considered confidential business information: see sections 105 and 112.

- (3) To avoid doubt, the Executive Director, in considering an application, may have regard to any information the Executive Director is satisfied is relevant to the application.
- (4) If information that is relevant to the application becomes available to an applicant before a decision on the application is made, the applicant must give the information to the Executive Director as soon as is practicable after the information becomes so available.
- (5) An applicant may, at any time before a decision has been made on an application, in writing to the Executive Director, withdraw the application.
- (6) Without limiting subsection (1), the Executive Director may approve different forms and the rules may prescribe different information, documents or fees for different:
- (a) classes of industrial chemicals; or
  - (b) categories of introduction; or
  - (c) circumstances of introduction; or
  - (d) classes of applications or applicants.

**168 Ban on animal test data for applications for cosmetics**

- (1) Without limiting subsection 167(1), if an industrial chemical is to be introduced for an end use solely in cosmetics, an application under this Act relating to the introduction must meet the requirement in subsection (2).
- (2) The requirement is that the application must not include animal test data obtained from tests conducted on or after 1 July 2020 in



circumstances prescribed by the rules for the purposes of this subsection.

### 169 Calculating the consideration period for an application

- (1) If a circumstance mentioned in column 1 of an item in the following table applies in relation to an application, then for the purposes of calculating the consideration period for the application, exclude the period beginning on the day mentioned in column 2 of the item and ending on the day mentioned in column 3 of the item.

<b>Calculating excluded periods</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>If this circumstance applies:</b>	<b>exclude the period beginning on this day:</b>	<b>and ending on this day:</b>
1	Information is requested from an applicant under section 33 or 45	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the Executive Director; or (b) the last day of the period specified in the notice in accordance with subsection 33(2) or 45(2)
2	Advice is sought from a prescribed body under section 34 or 46	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the Executive Director; or (b) the last day of the period specified in the notice in accordance with subsection 34(4) or 46(4)

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<b>Calculating excluded periods</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>If this circumstance applies:</b>	<b>exclude the period beginning on this day:</b>	<b>and ending on this day:</b>
3	Advice is sought from the Gene Technology Regulator under section 35 or 47	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the request; or (b) the last day of the period specified in the notice in accordance with subsection 35(3) or 47(3)
4	A draft assessment statement is given to an applicant under section 36 or 48	The day the draft assessment statement is given	The earlier of: (a) the day a complete submission is given; or (b) the last day of the period specified in the notice in accordance with subsection 36(3) or 48(3)
5	Information is requested from an applicant under section 55	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the Executive Director; or (b) the last day of the period specified in the notice in accordance with subsection 55(2).
6	Advice is sought from a prescribed body under section 56	The day notice of the request is given	The earlier of: (a) the day a complete response is given to

## Section 169

<b>Calculating excluded periods</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>If this circumstance applies:</b>	<b>exclude the period beginning on this day:</b>	<b>and ending on this day:</b>
			the Executive Director; or (b) the last day of the period specified in the notice in accordance with subsection 56(3)
7	Advice is sought from the Gene Technology Regulator under section 57	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the request; or (b) the last day of the period specified in the notice in accordance with subsection 57(3)
8	Information is requested from an applicant under section 90	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the Executive Director; or (b) the last day of the period specified in the notice in accordance with subsection 90(2)
9	Information is requested from an applicant under section 106	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the request; or (b) the last day of the period specified in the notice in accordance with

## Section 169

<b>Calculating excluded periods</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>If this circumstance applies:</b>	<b>exclude the period beginning on this day:</b>	<b>and ending on this day:</b>
			subsection 106(2)
10	A decision is made to not approve an application for information to be treated as confidential business information under paragraph 108(1)(b)	The day notice of the decision is given	The day the reconsideration and review rights under section 166 in relation to the decision have been exhausted or have expired
10A	Information is requested from an applicant under section 113A	The day notice of the request is given	The earlier of: (a) the day a complete response is given to the request; or (b) the last day of the period specified in the notice in accordance with subsection 113A(2)
11	A notice is given to an applicant under subsection (3) of this section	The day the notice is given	The last day of the period specified in paragraph (3)(a) or (b) of this section
12	A circumstance prescribed by the rules for the purposes of this item	The day prescribed by the rules for the purposes of this item	The day prescribed by the rules for the purposes of this item

- (2) For the purposes of calculating the total number of days to be excluded from a consideration period for an application under subsection (1), if a day in a period to be excluded under an item in the table in that subsection overlaps with a day in another period

calculated for the same or a different item, that day must only be counted once.

- (3) If the Executive Director receives information covered by subsection (4), the Executive Director may, by written notice given to the applicant, exclude a period from the calculation of the consideration period equal to the following:
- (a) for information relating to an application for an assessment certificate, a variation of a term of an assessment certificate or a variation of a term of an Inventory listing—20 working days after the day the notice is given;
  - (b) for information relating to an application for a commercial evaluation authorisation or a variation to a term of a commercial evaluation authorisation—10 working days after the day the notice is given.
- (4) Information is covered by this subsection if:
- (a) the information is given to the Executive Director in relation to an application before a decision has been made on the application; and
  - (b) the information is about hazards to human health or the environment relating to the application; and
  - (c) the Executive Director is satisfied that in considering the application, having regard to the information would involve significant additional time and effort.

### **170 Additional provisions about fees**

- (1) The rules may prescribe circumstances in which the Executive Director may, on behalf of the Commonwealth, wholly or partly waive fees that would otherwise be payable under a provision of this Act.
- (2) A fee that is payable under a provision of this Act must not be such as to amount to taxation.

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**171 Protection from civil actions**

- (1) This section applies to:
  - (a) the Secretary of the Department; and
  - (b) the Executive Director; and
  - (c) a person assisting the Executive Director in accordance with section 153 or 154.
- (2) A person mentioned in subsection (1) is not liable to an action or other proceeding for damages for, or in relation to, an act done or omitted to be done in good faith by the person:
  - (a) in the performance, or purported performance, of any functions under this Act; or
  - (b) in the exercise, or purported exercise, of any powers under this Act.

**172 Executive Director may use computer programs to make decisions**

- (1) The Executive Director may arrange for the use, under the Executive Director's control, of computer programs for any purposes for which the Executive Director may or must take administrative action under this Act.
- (2) Administrative action taken by the operation of a computer program under such an arrangement is, for the purposes of this Act, taken to be administrative action taken by the Executive Director.
- (3) The Executive Director may substitute a decision for a decision the Executive Director is taken to have made under subsection (2) if the Executive Director is satisfied that the decision made by the operation of the computer program is incorrect.

**173 Copies of documents**

The Executive Director may inspect a document produced under a provision of this Act and may make and retain copies of, or take extracts from, such a document.

**174 Executive Director may retain documents**

- (1) The Executive Director may take, and retain for as long as is necessary, possession of a document produced under a provision of this Act.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Executive Director to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Executive Director must, at such times and places as the Executive Director thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

**175 Self-incrimination**

- (1) An individual is not excused from giving information or producing a document under section 161 on the ground that the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the information given or the document produced; or
  - (b) giving the information or producing the document; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;is not admissible in evidence against the individual:
  - (d) in criminal proceedings other than proceedings for a contravention of subsection 162(1) or proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to section 161 or 162; or

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- (e) in civil proceedings other than proceedings for the recovery of a penalty in relation to a contravention of subsection 162(1).

**176 Delegations by Minister**

- (1) The Minister may, in writing, delegate his or her powers or functions under section 145, 147, 148 or 152 to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or an acting SES employee, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

**177 Delegations by Executive Director**

- (1) The Executive Director may, in writing, delegate any or all of his or her powers or functions under this Act to:
  - (a) an APS employee who holds, or is acting in, an Executive Level 1, or equivalent, position in the Department; or
  - (b) an official of another non-corporate Commonwealth entity who holds, or is acting in, an Executive Level 1, or equivalent, position in the entity.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Executive Director.

**178 Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or



Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **179 Annual report**

The annual report prepared by the Secretary of the Department and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include a report from the Executive Director on the operation of this Act during the period.

### **180 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Industrial Chemicals Act 2019	12, 2019	12 Mar 2019	s 3–180: 1 July 2020 (s 2(1) item 2) Remainder: 12 Mar 2019 (s 2(1) item 1)	
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (item 25): 16 Dec 2020 (s 2(1) item 2)	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Part 3	
Division 5	
s 67 .....	am No 129, 2020

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