



# **Industrial Chemicals Environmental Management (Register) Act 2021**

**No. 27, 2021**

## **Compilation No. 2**

|                                   |                  |
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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 Environmental Management (Register) Act 2021* that shows the text of the law as amended and in force on 17 October 2023 (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 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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 relating to the environmental management  
of industrial chemicals, and for other purposes**

**Part 1—Preliminary**

**1 Short title**

This Act is the *Industrial Chemicals Environmental Management (Register) Act 2021*.

**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. The whole of this Act | The day after this Act receives the Royal Assent. | 27 March 2021 |

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.

**3 Objects of this Act**

The objects of this Act are as follows:

- (a) to give effect to an intergovernmental scheme involving the Commonwealth and the States that relates to the

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- establishment of nationally consistent standards to minimise risks to the environment from industrial chemicals;
- (b) to provide for the Government of the Commonwealth, as the national Government of Australia, to establish a register of scheduling decisions for relevant industrial chemicals;
  - (c) to provide for the Register to operate as a national scheme in that another law of the Commonwealth or a law of a State:
    - (i) may apply or adopt the Register (with or without modification); and
    - (ii) may make provision for, or in relation to, its implementation and enforcement, as so applied or adopted;
  - (d) to reflect, through scheduling decisions for relevant industrial chemicals that are included in the Register, the views of the Commonwealth on the controls, including the risk management measures, that should be applied to those chemicals;
  - (e) to regulate the conduct of the Commonwealth, and persons employed or engaged by the Commonwealth, in connection with the Register;
  - (f) to contribute to meeting Australia's international obligations in relation to industrial chemicals.

### 4 Simplified outline of this Act

This Act provides for the Minister to make one or more scheduling decisions for a relevant industrial chemical and to vary or revoke such a decision. Before making, varying or revoking such a decision, the Minister must consult the public, may seek information from a person and may consult with the State Environment Ministers.

In making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister must, among other things, comply with the decision-making principles. The decision-making principles are made by the Minister and the Minister must consult



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the public and State Environment Ministers before making, varying or revoking them.

The Minister must ensure that a scheduling decision for a relevant industrial chemical, as made or as varied, is recorded in the Register. If such a decision is revoked, the Minister must ensure it is removed from the Register.

The Register is made by the Minister but it does not create prohibitions, restrictions or obligations that are enforceable in judicial or other proceedings.

Another law of the Commonwealth, or a law of a State, may apply or adopt the Register (with or without modification) and may make provision for, or in relation to, the implementation and enforcement of the Register, as so applied or adopted.

There is to be an Advisory Committee whose members will be appointed by the Minister. The Committee will have functions that include advising the Minister about certain matters.

This Act also includes provisions dealing with confidentiality and information sharing, scheduling charge and other miscellaneous matters (such as the functions of the Executive Director).

**5 Crown to be bound**

This Act binds the Crown in each of its capacities.

**6 Extension to external Territories**

This Act extends to the external Territories.

**7 Definitions**

In this Act:

*AACN* has the same meaning as in the Industrial Chemicals Act.

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**Advisory Committee** means the Advisory Committee on the Environmental Management of Industrial Chemicals established under section 27.

**Advisory Committee member** means a member of the Advisory Committee, and includes the Chair.

**assessment certificate** means an assessment certificate issued under section 37 of the Industrial Chemicals Act.

**CAS name** for an industrial chemical has the same meaning as in the Industrial Chemicals Act.

**CAS number** for an industrial chemical has the same meaning as in the Industrial Chemicals Act.

**Chair** means the Chair of the Advisory Committee.

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

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

**Commonwealth risk assessment** means:

- (a) a report prepared under section 31, 57, 68 or 68A of the repealed *Industrial Chemicals (Notification and Assessment) Act 1989*; or
- (b) an assessment statement (within the meaning of the Industrial Chemicals Act); or
- (c) an evaluation statement (within the meaning of the Industrial Chemicals Act); or
- (d) a risk assessment (however described) of a kind specified in the rules.

**confidential information** means information in relation to which a request under subsection 42(1) has been given to the Minister.

***decision-making principles*** means the instrument made under subsection 23(1) and includes such an instrument as varied under subsection 23(2).

***end use*** for an industrial chemical has the same meaning as in the Industrial Chemicals Act.

***enforcement body***: see subsection 59(2).

***entrusted IC person*** means an entrusted person within the meaning of the Industrial Chemicals Act.

***entrusted person*** means:

- (a) the Minister; or
- (b) the Secretary of the Environment Department; or
- (c) an APS employee in the Environment Department; or
- (d) the Executive Director; or
- (e) an APS employee in the Health Department; or
- (f) an Advisory Committee member; or
- (g) a consultant engaged under section 73; or
- (h) a person engaged or employed by the Environment Department; or
- (i) a person employed, under the *Members of Parliament (Staff) Act 1984*, as a personal employee of the Minister.

***environment*** includes:

- (a) ecosystems and their constituent parts, including people and communities; and
  - (b) natural and physical resources; and
  - (c) the qualities and characteristics of locations, places and areas;
- but does not include the social, economic or cultural aspects of the expression ***environment***.

***Environment Department*** means the Department administered by the Minister administering this Act.

***Executive Director*** has the same meaning as in the Industrial Chemicals Act.

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**Federal Court** means the Federal Court of Australia.

**foreign government body** means:

- (a) a department of the government of a foreign country or a part of a foreign country; or
- (b) an agency or authority of a foreign country or a part of a foreign country.

**generalised end use** has the same meaning as in the Industrial Chemicals Act.

**Health Department** means the Department administered by the Minister administering the Industrial Chemicals Act.

**holder** of an assessment certificate has the same meaning as in the Industrial Chemicals Act.

**industrial chemical**: see section 8.

**Industrial Chemicals Act** means the *Industrial Chemicals Act 2019*.

**international agreement** means an agreement:

- (a) whose parties are Australia and one or more foreign countries; and
- (b) that is in force for Australia.

**nominated person** for confidential information means the person nominated under paragraph 42(3)(c) in a request given under subsection 42(1) in relation to the information.

**official** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

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

**personal information** has the same meaning as in the *Privacy Act 1988*.

***protected IC information*** means protected information within the meaning of the Industrial Chemicals Act and includes information that is taken to be protected information for the purposes of that Act.

Note: For when information is taken to be protected information for the purposes of the Industrial Chemicals Act, see item 38 of Schedule 2 to the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act 2019*.

***protected information*** means:

- (a) confidential information; or
- (b) protected IC information.

***public international organisation*** means:

- (a) an organisation:
  - (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
  - (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
- (b) an organisation established by, or a group of organisations constituted by:
  - (i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or
  - (ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or
- (c) an organisation that is:
  - (i) an organ of, or office within, an organisation described in paragraph (a) or (b); or
  - (ii) a commission, council or other body established by an organisation so described or such an organ; or
  - (iii) a committee, or subcommittee of a committee, of an organisation so described, or of such an organ, council or body.

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**reconsideration decision** means a decision made under subsection 47(5).

**Register** means the instrument made under subsection 22(1) and includes such an instrument as varied.

**registered introducer** for a registration year means a person who is registered under section 17 of the Industrial Chemicals Act for the registration year.

**registration charge** has the same meaning as in the Industrial Chemicals Act.

**registration year** means the period of 12 months beginning on:

- (a) 1 September 2021; or
- (b) 1 September of a later year.

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

**relevant industrial chemical** means:

- (a) a particular industrial chemical; or
- (b) a particular class of industrial chemicals.

**rules** means the rules made under section 76.

**scheduling charge** means charge imposed by:

- (a) the *Industrial Chemicals Environmental Management (Register) Charge (Customs) Act 2021*; or
- (b) the *Industrial Chemicals Environmental Management (Register) Charge (Excise) Act 2021*; or
- (c) the *Industrial Chemicals Environmental Management (Register) Charge (General) Act 2021*.

**scheduling decision** for a relevant industrial chemical: see subsection 11(3).

**State** includes the Northern Territory and the Australian Capital Territory.

***State Environment Minister*** means a Minister of a State who is responsible for matters relating to the environment.

***State government body*** means:

- (a) a department of the government of a State; or
- (b) an agency or authority of a State.

***vacancy***, in relation to the office of an Advisory Committee member, has a meaning affected by section 9.

## **8 Meaning of *industrial chemical***

- (1) ***Industrial chemical*** is an industrial chemical within the meaning of section 10 of the Industrial Chemicals Act.
- (2) 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 (within the meaning of the Industrial Chemicals Act).

## **9 Vacancy in the office of an Advisory Committee member**

For the purposes of a reference in:

- (a) this Act to a ***vacancy*** in the office of an Advisory Committee member; or
- (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body;

there are taken to be 8 offices of member of the Advisory Committee in addition to the Chair.

## **Part 2—Register of scheduling decisions for relevant industrial chemicals**

### **Division 1—Introduction**

#### **10 Simplified outline of this Part**

This Part provides for the Minister to make one or more scheduling decisions for a relevant industrial chemical and to vary or revoke such a decision. Before making, varying or revoking such a decision, the Minister must consult the public, may seek information from a person and may consult with the State Environment Ministers.

In making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister must, among other things, comply with the decision-making principles. The decision-making principles are made by the Minister and the Minister must consult the public and State Environment Ministers before making, varying or revoking them.

The Minister must ensure that a scheduling decision for a relevant industrial chemical, as made or as varied, is recorded in the Register. If such a decision is revoked, the Minister must ensure it is removed from the Register.

The Register is made by the Minister but it does not create prohibitions, restrictions or obligations that are enforceable in judicial or other proceedings.

Another law of the Commonwealth, or a law of a State, may apply or adopt the Register (with or without modification) and may make provision for, or in relation to, the implementation and enforcement of the Register, as so applied or adopted.



## **Division 2—Scheduling decisions for relevant industrial chemicals**

### **11 Minister may make scheduling decision for relevant industrial chemical**

- (1) The Minister may make one or more scheduling decisions for a relevant industrial chemical.
- (2) If the Minister makes a scheduling decision for a relevant industrial chemical, the Minister must ensure that the decision for the chemical is recorded in the Register.
- (3) A **scheduling decision** for a relevant industrial chemical is any one or more of the following decisions:
  - (a) a decision to list the chemical in a particular Schedule or Schedules of the Register;
  - (b) a decision to specify any one or more of the following matters in relation to the chemical as so listed:
    - (i) that the exportation, importation or manufacture of the chemical is prohibited, or restricted, in all circumstances or in specified circumstances;
    - (ii) that all or any end uses for the chemical are prohibited, or restricted, in all circumstances or in specified circumstances;
    - (iii) one or more end uses for the chemical;
    - (iv) one or more risk management measures for the chemical or for any specified end uses for the chemical;
  - (c) a decision relating to the chemical that is of a kind specified in the rules.

Note: Subsection 14(2) requires the Minister to specify a generalised end use for an industrial chemical in certain circumstances.

- (4) For the purposes of listing a relevant industrial chemical in a Schedule of the Register, the Minister may identify the chemical:
  - (a) in a single way; or

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(b) in 2 or more ways.

Note 1: The Minister may, for example, identify the relevant industrial chemical by specifying all or any of the following:

- (a) the CAS name for the chemical;
- (b) the CAS number for the chemical;
- (c) the name recommended by the International Union of Pure and Applied Chemistry for the chemical;
- (d) the molecular formula of the chemical.

Note 2: Subsection 14(1) requires the Minister to identify an industrial chemical by specifying an AACN for the chemical in certain circumstances.

- (5) The Minister may decide to list a particular industrial chemical in a Schedule of the Register even if it is included in a particular class of industrial chemicals that is listed in that Schedule or another Schedule of the Register.
- (6) A risk management measure specified by the Minister may:
  - (a) prohibit or restrict particular conduct or things in all circumstances or in specified circumstances; or
  - (b) require particular conduct or things in all circumstances or in specified circumstances; or
  - (c) impose an obligation in relation to particular conduct or things in all circumstances or in specified circumstances; or
  - (d) apply from or until a particular day or for a particular period.

### **12 Variation or revocation of scheduling decision made for relevant industrial chemical**

- (1) If the Minister makes a scheduling decision for a relevant industrial chemical under subsection 11(1), the Minister may vary or revoke the decision for the chemical.
- (2) If the Minister varies a scheduling decision for a relevant industrial chemical under subsection (1), the Minister must ensure that the decision for the chemical, as so varied, is recorded in the Register.

- (3) If the Minister revokes a scheduling decision for a relevant industrial chemical under subsection (1), the Minister must ensure that the decision for the chemical is removed from the Register.

### **13 Compliance with decision-making principles etc.**

- (1) The Minister must not make a scheduling decision for a relevant industrial chemical unless the decision-making principles are in force.
- (2) In making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister must comply with the decision-making principles.

### **14 Minister must specify AACN, or generalised end use, for industrial chemical in certain circumstances**

#### *Specification of AACN for an industrial chemical*

- (1) If:
- (a) an AACN has been determined under the Industrial Chemicals Act for an industrial chemical; and
  - (b) the Executive Director is required under subsection 109(1) of that Act to publish the AACN for the chemical in lieu of the proper name for the chemical (including the CAS name, CAS number and molecular formula for the chemical); and
  - (c) the period mentioned in subsection 109(3) of that Act that relates to that determination has begun but not ended; and
  - (d) the Minister proposes to make or vary, during that period, a scheduling decision for the chemical;
- the Minister must, for the purposes of making or varying the scheduling decision, identify the chemical by specifying the AACN for the chemical in lieu of the proper name for the chemical (including the CAS name, CAS number and molecular formula for the chemical).

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*Specification of generalised end use for an industrial chemical*

(2) If:

- (a) a generalised end use has been determined under the Industrial Chemicals Act for an industrial chemical; and
- (b) the Executive Director is required under subsection 109(2) of that Act to publish the generalised end use for the chemical in lieu of the end use for the chemical; and
- (c) the period mentioned in subsection 109(3) of that Act that relates to that determination has begun but not ended; and
- (d) the Minister proposes to make or vary, during that period, a scheduling decision for the chemical that relates to that end use;

the Minister must, for the purposes of making or varying the scheduling decision, specify the generalised end use for the chemical in lieu of the end use for the chemical.

**15 Minister must have regard to certain matters in making etc. scheduling decision**

- (1) In making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister must have regard to the following:
  - (a) if there is a single relevant Commonwealth risk assessment in relation to the chemical—that assessment;
  - (b) if there are 2 or more relevant Commonwealth risk assessments in relation to the chemical—the most recent of those assessments;
  - (c) any relevant risks that the chemical poses, or may pose, to the environment and how any such risks may be minimised;
  - (d) any relevant risks that a relevant end use of the chemical poses, or may pose, to the environment and how any such risks may be minimised;
  - (e) any relevant advice given to the Minister by the Advisory Committee;
  - (f) if Australia has any relevant obligations in relation to the chemical under an international agreement specified in the rules—those obligations;

- (g) any relevant submissions made in accordance with an invitation under subsection 17(1);
  - (h) any relevant information given to the Minister under subsection 19(3) or 20(3);
  - (i) any such matters as are specified in the rules.
- (2) Subsection (1) does not apply to a variation of a scheduling decision for a relevant industrial chemical if the variation is of a minor nature.
- (3) For the purposes of subsection (2), a variation of a scheduling decision for a relevant industrial chemical that does no more than change the way or ways in which the chemical is identified is taken to be a variation of a minor nature.
- (4) If:
- (a) a scheduling decision for a relevant industrial chemical specified a generalised end use for the chemical in lieu of the end use for the chemical; and
  - (b) a variation of the scheduling decision does no more than to specify the end use for the chemical instead of that generalised end use;
- then, for the purposes of subsection (2), the variation is taken to be a variation of a minor nature.

#### **16 Minister may have regard to certain matters in making etc. scheduling decision**

- (1) In making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister may have regard to the following:
- (a) if there are 2 or more relevant Commonwealth risk assessments in relation to the chemical—those assessments other than the most recent of them;
  - (b) if a Commonwealth entity has undertaken a relevant risk assessment (however described) in relation to the chemical and that assessment is not a Commonwealth risk assessment—that assessment;

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- (c) if a State government body has undertaken a relevant risk assessment (however described) in relation to the chemical—that assessment;
  - (d) if a foreign government body has undertaken a relevant risk assessment (however described) in relation to the chemical—that assessment;
  - (e) if a public international organisation has undertaken a relevant risk assessment (however described) in relation to the chemical—that assessment;
  - (f) any environmental, social or economic matter that the Minister considers relevant to the making, varying or revoking (as the case may be) of the decision for the chemical;
  - (g) any relevant information given to the Minister by an entrusted IC person for the purposes of this Act;
  - (h) any other matters as are specified in the rules;
  - (i) any other matters as the Minister considers relevant.
- (2) In determining for the purposes of paragraph (1)(f) whether any environmental, social or economic matter is relevant to the making, varying or revoking (as the case may be) of the scheduling decision for the relevant industrial chemical, it is to be assumed that the Commonwealth and each State has made a law:
- (a) applying or adopting the Register; and
  - (b) making provision for, or in relation to, the implementation and enforcement of the Register, as so applied or adopted.

**17 Public consultation about scheduling decision for relevant industrial chemical**

- (1) Before making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister must cause to be published on the Environment Department's website a notice:
- (a) setting out the proposed decision or the proposed variation or revocation of the decision; and
  - (b) inviting persons to make submissions to the Minister about the proposed decision, or the proposed variation or

revocation of the decision, in the manner, and within the time limit, specified in the notice.

Note: This subsection may not apply to the making of a scheduling decision for a particular industrial chemical to which an assessment certificate relates: see section 18.

- (2) The time limit must not be shorter than 20 business days after the notice is published.
- (3) Subsection (1) does not apply to a variation of a scheduling decision for a relevant industrial chemical if the variation is of a minor nature.
- (4) For the purposes of subsection (3), a variation of a scheduling decision for a relevant industrial chemical that does no more than change the way or ways in which the chemical is identified is taken to be a variation of a minor nature.
- (5) If:
  - (a) a scheduling decision for a relevant industrial chemical specified a generalised end use for the chemical in lieu of the end use for the chemical; and
  - (b) a variation of the scheduling decision does no more than to specify the end use for the chemical instead of that generalised end use;then, for the purposes of subsection (3), the variation is taken to be a variation of a minor nature.

## **18 Consultation about scheduling decision for particular industrial chemical to which assessment certificate relates**

- (1) This section applies if:
  - (a) an assessment certificate is issued in relation to a particular industrial chemical; and
  - (b) the Minister is considering making a scheduling decision for the particular industrial chemical under subsection 11(1).

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- (2) Unless the Minister determines otherwise, section 17 does not apply in relation to the making of the scheduling decision for the particular industrial chemical.
- (3) If the Minister considers it is appropriate to do so, the Minister may consult the holder of the assessment certificate about the making of the scheduling decision for the particular industrial chemical.

### **19 Minister may request information relevant to the making etc. of scheduling decision**

- (1) The Minister may, by written notice given to a person, request the person to:
  - (a) give the Minister information that is relevant to the making, variation or revocation of a scheduling decision for a relevant industrial chemical; and
  - (b) do so in the manner, and within the time limit, specified in the notice.
- (2) The time limit must not be shorter than 20 business days after the notice is given to the person.
- (3) The person may give the Minister information in accordance with the request.

### **20 Minister may invite persons to give information relevant to the making etc. of scheduling decision**

- (1) The Minister may cause to be published on the Environment Department's website a notice inviting any persons who have:
  - (a) specified information; or
  - (b) a specified type of information;that is relevant to the making, variation or revocation of a scheduling decision for a relevant industrial chemical to give the Minister that information in the manner, and within the time limit, specified in the notice.



- (2) The time limit must not be shorter than 20 business days after the notice is published.
- (3) A person may give the Minister information in accordance with the invitation.

## **21 Consultation with State Environment Ministers**

Before making, varying or revoking a scheduling decision for a relevant industrial chemical, the Minister may consult the State Environment Ministers.

## **Division 3—Register of scheduling decisions for relevant industrial chemicals**

### **22 Register of scheduling decisions for relevant industrial chemicals**

- (1) The Minister may, by legislative instrument, establish a register of scheduling decisions for relevant industrial chemicals that are made or varied under Division 2 of this Part.

Note 1: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the *Legislation Act 2003* do not apply to the instrument: see subsections 44(1) and 54(1) of that Act.

- (2) Without limiting subsection (1), the Register may also include the following:
- (a) explanatory information relating to the Register;
  - (b) explanatory information relating to a scheduling decision for a relevant industrial chemical;
  - (c) any other information specified in the rules.

- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the Register may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time.

- (4) The Register does not create prohibitions, restrictions or obligations that are enforceable in judicial or other proceedings.

Note: Another law of the Commonwealth, or a law of a State, may apply or adopt the Register (with or without modification) and may make provision for, or in relation to, the implementation and enforcement of the Register, as so applied or adopted.

## Division 4—Decision-making principles

### 23 Decision-making principles

- (1) The Minister may, by legislative instrument, determine principles to be complied with by the Minister in making, varying or revoking scheduling decisions for relevant industrial chemicals.

Note: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the *Legislation Act 2003* do not apply to the instrument: see subsections 44(1) and 54(1) of that Act.

- (2) The Minister may, by legislative instrument, vary or revoke the decision-making principles.

Note: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the *Legislation Act 2003* do not apply to the instrument: see subsections 44(1) and 54(1) of that Act.

- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the decision-making principles may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time.

### 24 Public consultation about decision-making principles

- (1) Before making, varying or revoking the decision-making principles, the Minister must:
- (a) cause to be published on the Environment Department's website a notice:
    - (i) setting out the proposed principles or the proposed variation or revocation of the principles; and
    - (ii) inviting persons to make submissions to the Minister about the proposed principles, or the proposed variation or revocation of the principles, in the manner, and within the time limit, specified in the notice; and
  - (b) consider any submissions that:

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- (i) are made in accordance with the invitation; and
  - (ii) are relevant to the making, variation or revocation of the principles (as the case may be).
- (2) The time limit must not be shorter than 20 business days after the notice is published.
- (3) Subsection (1) does not apply to a variation of the decision-making principles if the variation is of a minor nature.

**25 Consultation with State Environment Ministers**

- (1) Before making, varying or revoking the decision-making principles, the Minister must consult the State Environment Ministers.
- (2) Subsection (1) does not apply to a variation of the decision-making principles if the variation is of a minor nature.

## **Part 3—Advisory Committee on the Environmental Management of Industrial Chemicals**

### **Division 1—Introduction**

#### **26 Simplified outline of this Part**

There is to be an Advisory Committee on the Environmental Management of Industrial Chemicals.

The Advisory Committee will have functions that include advising the Minister about matters that are referred to it by the Minister and that relate to the making, variation or revocation of a scheduling decision for a relevant industrial chemical, the Register or the decision-making principles.

The Advisory Committee consists of a Chair and at least 3, but not more than 8, other members.

The Minister will appoint the members of the Advisory Committee.

## **Division 2—Establishment and functions of the Advisory Committee**

### **27 Advisory Committee on the Environmental Management of Industrial Chemicals**

The Advisory Committee on the Environmental Management of Industrial Chemicals is established by this section.

### **28 Functions of the Advisory Committee**

The Advisory Committee has the following functions:

- (a) to advise the Minister about matters that are referred to the Advisory Committee by the Minister and that relate to the making, variation or revocation of any of the following:
  - (i) a scheduling decision for a relevant industrial chemical;
  - (ii) the Register;
  - (iii) the decision-making principles;
- (b) any other functions conferred on the Advisory Committee by the rules;
- (c) to do anything incidental to or conducive to the performance of the above functions.

## **Division 3—Membership of the Advisory Committee**

### **29 Membership of the Advisory Committee**

The Advisory Committee consists of the following members:

- (a) a Chair;
- (b) at least 3, and not more than 8, other members.

### **30 Appointment of Advisory Committee members**

- (1) Each Advisory Committee member is to be appointed by the Minister by written instrument, on a part-time basis.

Note: An Advisory Committee member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) An Advisory Committee member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) A person is not eligible for appointment as an Advisory Committee member unless the Minister is satisfied that the person has substantial experience or knowledge, and significant standing, in any of the following fields:
  - (a) industrial chemistry;
  - (b) ecotoxicology;
  - (c) environmental risk management;
  - (d) environmental health;
  - (e) human toxicology;
  - (f) applied socio-economic analysis;
  - (g) ecology;
  - (h) chemical regulation;
  - (i) environmental regulation;
  - (j) any other appropriate field of expertise.

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- (4) In appointing the Advisory Committee members, the Minister must ensure that the Advisory Committee members collectively possess an appropriate balance of experience or knowledge in the fields mentioned in subsection (3).

### **31 Acting appointments**

#### *Chair*

- (1) The Minister may appoint an Advisory Committee member (other than the Chair) to act as the Chair:
- (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

#### *Other Advisory Committee member*

- (2) The Minister may appoint a person to act as an Advisory Committee member (other than the Chair):
- (a) during a vacancy in the office of an Advisory Committee member (other than the Chair), whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when an Advisory Committee member (other than the Chair):
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

#### *Eligibility*

- (3) A person is not eligible for appointment under subsection (2) unless the person is eligible for appointment as an Advisory Committee member.



- Note 1: For eligibility to be appointed as an Advisory Committee member, see subsection 30(3).
- Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

### **32 Remuneration and allowances**

- (1) An Advisory Committee member 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, the member is to be paid the remuneration that is specified in the rules.
- (2) An Advisory Committee member is to be paid the allowances that are specified in the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **33 Leave of absence**

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another Advisory Committee member on the terms and conditions that the Chair determines.

### **34 Disclosure of interests to the Minister**

An Advisory Committee member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

### **35 Disclosure of interests to the Advisory Committee**

- (1) An Advisory Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered

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by the Advisory Committee must disclose the nature of the interest to a meeting of the Committee.

- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Advisory Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Advisory Committee.
- (4) Unless the Advisory Committee otherwise determines, the Advisory Committee member:
  - (a) must not be present during any deliberation by the Committee on the matter; and
  - (b) must not take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Advisory Committee member:
  - (a) must not be present during any deliberation of the Advisory Committee for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Advisory Committee.

## 36 Other paid work

An Advisory Committee member must not engage in any paid work that conflicts or could conflict with the proper performance of the member's duties.

## 37 Resignation

- (1) An Advisory Committee member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **38 Termination of appointment**

- (1) The Minister may terminate the appointment of an Advisory Committee member:
  - (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of an Advisory Committee member if:
  - (a) the member:
    - (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 the member's creditors; or
    - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
  - (b) the member is absent, except on leave of absence, for 3 consecutive meetings of the Advisory Committee; or
  - (c) the member engages in paid work that conflicts or may conflict with the proper performance of the member's duties (see section 36); or
  - (d) the member fails, without reasonable excuse, to comply with section 34 or 35 (which deal with the disclosure of interests).

### **39 Other terms and conditions**

An Advisory Committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

## **Division 4—Procedures of the Advisory Committee**

### **40 Procedures of the Advisory Committee**

- (1) The Advisory Committee may, subject to any direction given under subsection (2), determine its own procedures.
- (2) The Minister may give the Advisory Committee written directions about the Committee's procedures.
- (3) A direction given under subsection (2) is not a legislative instrument.

## **Part 4—Confidentiality and information sharing**

### **Division 1—Introduction**

#### **41 Simplified outline of this Part**

This Part deals with confidential information, the use and disclosure of protected information and other information sharing matters.

A person who gives information to the Minister in relation to the making, variation or revocation of a scheduling decision for a relevant industrial chemical may request that the information not be publicly disclosed. If such a request is made, the information will be confidential information for the purposes of this Part.

If the Minister proposes to publicly disclose confidential information, the Minister must give the nominated person for the information notice of that proposal. The nominated person may, within the time limit specified in the notice, apply to the Minister for the information not to be publicly disclosed.

If the nominated person makes such an application, the Minister must decide whether or not to approve the application. The Minister may publicly disclose the information in certain circumstances, including if the Minister decides not to approve the application and any reconsideration and review rights in relation to the decision have been exhausted or have expired.

Both confidential information and protected IC information will be protected information for the purposes of this Part. If an entrusted person obtains protected information in the person's capacity as an entrusted person, the person must not use or disclose the information unless the use or disclosure is authorised by this Act, the rules or another law of the Commonwealth.

## **Division 2—Confidential information**

### **42 Request that information not be publicly disclosed**

- (1) If a person gives information to the Minister (whether under this Act or otherwise) in relation to the making, variation or revocation of a scheduling decision for a relevant industrial chemical, the person may request that the information not be publicly disclosed under section 61.
- (2) However, a request under subsection (1) must not relate to:
  - (a) information in relation to which an application was made under subsection 113(2) of the Industrial Chemicals Act if that application was not approved under subsection 114(2) of that Act; or
  - (b) information in relation to which a notice was given under subsection 112(1) of that Act if no application in relation to the information was made under subsection 113(2) of that Act within the period specified in the notice.
- (3) A request under subsection (1) must:
  - (a) be made in writing; and
  - (b) be given to the Minister at the same time as the information is given to the Minister; and
  - (c) nominate a person to whom the Minister must give any notice under section 43 that relates to the information; and
  - (d) be accompanied by any documents or information specified in the rules.

### **43 Notice of proposed public disclosure of confidential information**

- (1) If the Minister proposes to publicly disclose confidential information under section 61, the Minister must give the nominated person for the information a written notice stating that:
  - (a) the Minister proposes to publicly disclose the information under that section; and

- (b) the nominated person may, within the time limit specified in the notice, apply under section 44 for the information not to be publicly disclosed under section 61; and
  - (c) if no such application is made within that time limit, the Minister may publicly disclose the information under section 61.
- (2) The time limit must not be shorter than 20 business days after the day the notice is given.

#### **44 Application for confidential information not to be publicly disclosed**

- (1) If the nominated person for confidential information is given a notice under subsection 43(1) in relation to the information, the nominated person may apply for the information not to be publicly disclosed under section 61.

Note: If no such application is made within the time limit specified in the notice, the Minister may publicly disclose the confidential information: see section 61.

- (2) The application must:
  - (a) be made in writing; and
  - (b) be made within the time limit specified in the notice; and
  - (c) be accompanied by any documents or information specified in the rules; and
  - (d) be accompanied by the fee (if any) specified in the rules.
- (3) The application may be made by the nominated person alone or jointly with another person.
- (4) The fee specified for the purposes of paragraph (2)(d) must not be such as to amount to taxation.
- (5) The rules may make provision for, or in relation to, the refund, remission or waiver of the fee specified for the purposes of paragraph (2)(d).

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**45 Minister may request further information in relation to application**

- (1) If:
- (a) the nominated person for confidential information makes an application under subsection 44(1) in relation to the information (whether alone or jointly with another person); and
  - (b) the Minister needs further information to make a decision on the application;
- the Minister may, by written notice given to the nominated person, request the nominated person to give further information to the Minister within the time limit specified in the notice.
- (2) The time limit must not be shorter than 20 business days after the day the notice is given.
- (3) If the nominated person does not give the requested further information within the time limit specified in the notice, the application is taken to be withdrawn at the end of the time limit.
- Note: If the application is taken to be withdrawn under this subsection, the Minister may publicly disclose the confidential information to which the application related: see section 61.
- (4) A notice given under subsection (1) must set out the effect of subsection (3) and section 61.

**46 Decision on application for confidential information not to be publicly disclosed**

- (1) If an application is made under subsection 44(1) in relation to confidential information, the Minister must decide whether or not to approve the application.
- Matters the Minister must have regard to*
- (2) In deciding whether or not to approve the application, the Minister must have regard to:



- (a) whether public disclosure of the confidential 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 public disclosure of the confidential information.

*Minister must not approve the application in certain cases*

- (3) The Minister must not approve the application to the extent that the application relates to confidential information that is:
  - (a) physical and chemical data about a relevant industrial chemical that does not reveal the chemical's composition; or
  - (b) summaries of data relating to risks to human health or the environment from the export, import, manufacture or use of a relevant industrial chemical.

*Notice of decision*

- (4) If the Minister decides to approve the application, the Minister must, within 14 days after making the decision, give the applicant or applicants written notice of the decision.
- (5) If the Minister decides to not approve the application, the Minister must, within 14 days after making the decision, give the applicant or applicants written notice of the following:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) the effect of section 61;
  - (d) information regarding their rights to seek reconsideration or review of the decision under sections 47 and 48.

Note: If the Minister decides not to approve the application, the Minister may publicly disclose the confidential information to which the application related if any such rights have been exhausted or have expired: see section 61.

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**47 Reconsideration of decision not to approve application for confidential information not to be publicly disclosed**

*Request for reconsideration of original decision*

- (1) A person whose interests are affected by a decision (the **original decision**) made under subsection 46(1) to not approve an application made under subsection 44(1) may request the Minister to reconsider the original decision.
- (2) The request must be made in writing and given to the Minister within:
  - (a) 20 business days after the day on which notice of the original decision was given under subsection 46(5); or
  - (b) such longer period as the Minister allows.

*Reconsideration of original decision*

- (3) Within 70 business days after the day the request is given, the Minister must reconsider the original decision.
- (4) If a delegate of the Minister is to reconsider the original decision, the delegate must:
  - (a) not have been involved in making the decision; and
  - (b) occupy a position that is at least the same level as that occupied by the person who made the decision.
- (5) After reconsidering the original decision, the Minister must:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.

*Reconsideration decision*

- (6) The reconsideration decision takes effect on the day it is made.
- (7) After the Minister makes the reconsideration decision, the Minister must give the person who made the request under subsection (1) written notice of the decision and the reasons for the decision.

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

- (8) The reconsideration decision is taken to have been made under the provision under which the original decision was made other than for the purposes of subsection (1).

#### **48 Review by the Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal for review of a reconsideration decision whether made by the Minister or a delegate of the Minister.

#### **49 Disclosure of confidential information under Division 3 not prevented**

Nothing in this Division prevents the disclosure of confidential information in accordance with a provision of Division 3 of this Part (other than section 61).

## **Division 3—Use or disclosure of protected information**

### **50 Prohibition on use or disclosure of protected 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 the person's capacity as an entrusted person; and
  - (c) the information is protected information; and
  - (d) the person uses or discloses the information.
- (2) Subsection (1) does not apply if the use or disclosure is authorised by:
- (a) this Act or the rules; or
  - (b) any other law of the Commonwealth.

**Note:** A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

#### *Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

**Penalty:** 300 penalty units.

#### *Strict liability offence*

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

**Penalty:** 60 penalty units.

#### *Civil penalty provision*

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

Civil penalty: 300 penalty units.

### **51 Use or disclosure of protected information by entrusted persons**

An entrusted person may use or disclose protected information if the use or disclosure is for the purposes of:

- (a) this Act; or
- (b) the *Industrial Chemicals Environmental Management (Register) Charge (Customs) Act 2021* or regulations made under that Act; or
- (c) the *Industrial Chemicals Environmental Management (Register) Charge (Excise) Act 2021* or regulations made under that Act; or
- (d) the *Industrial Chemicals Environmental Management (Register) Charge (General) Act 2021* or regulations made under that Act; or
- (e) the Register; or
- (f) the decision-making principles; or
- (g) the rules.

### **52 Disclosure of protected information to Commonwealth entities**

- (1) The Minister may disclose protected information to a Commonwealth entity if the Minister is satisfied that the information will assist the entity to perform its functions or exercise its powers.
- (2) A person contravenes this subsection if:
  - (a) the person is, or has been, an official of a Commonwealth entity; and
  - (b) the person has obtained information in the person's capacity as an official of the entity; and
  - (c) the information is protected information that was disclosed to the entity under subsection (1); and
  - (d) the person uses or discloses the information other than for the purpose for which it was disclosed to the entity.

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*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (2). The physical elements of the offence are set out in that subsection.

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.

**53 Disclosure of protected information to State Environment Minister or State government body**

The Minister (the *Commonwealth Minister*) may disclose protected information to a State Environment Minister or State government body if:

- (a) the Commonwealth Minister is satisfied that the disclosure of the information is necessary for the purposes of the Commonwealth Minister performing functions, or exercising powers, under:
  - (i) this Act; or
  - (ii) the decision-making principles; or
  - (iii) the rules; and
- (b) the State Environment Minister or State government body (as the case may be) has undertaken not to use or further disclose the information except in accordance with an agreement that:

- (i) is in force between the Commonwealth and the State;  
and
- (ii) applies in relation to the information; and
- (c) the Commonwealth Minister is satisfied that the information will be used and further disclosed only in accordance with the agreement.

#### **54 Use or disclosure of protected information with consent**

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

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

#### **55 Disclosure of protected information that is publicly available**

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

#### **56 Disclosure of protected information to person to whom protected information relates**

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

#### **57 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.

#### **58 Disclosure of protected information to a court, tribunal etc.**

An entrusted person may disclose protected information:

- (a) for the purposes of proceedings before:
  - (i) a court; or

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- (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 a court or such a tribunal, authority or person.

**59 Disclosure of protected information for the purposes of law enforcement etc.**

- (1) The Minister may disclose protected information to an enforcement body if:
  - (a) the Minister 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 functions of the body include that enforcement or protection; and
  - (c) the information is disclosed for the purposes of that enforcement or protection.
- (2) Each of the following is an *enforcement body*:
  - (a) a department, agency or authority of the Commonwealth;
  - (b) a State government body;
  - (c) the Australian Federal Police;
  - (d) the police force or police service of a State.

**60 Disclosure of protected information to reduce serious risk to human health or the environment**

- The Minister may disclose protected information if:
- (a) the Minister reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to human health or the environment; and



- (b) the disclosure is for the purposes of preventing or lessening that risk.

## **61 Public disclosure of confidential information by the Minister**

- (1) The Minister may publicly disclose protected information that is confidential information if:
  - (a) the Minister has given a notice (the *proposed disclosure notice*) under subsection 43(1) in relation to the information; and
  - (b) subsection (2) applies in relation to the information.
- (2) This subsection applies in relation to confidential information if any of the following apply:
  - (a) no application in relation to the information has been made under subsection 44(1) within the time limit specified in the proposed disclosure notice;
  - (b) an application in relation to the information that was made under subsection 44(1) is taken to have been withdrawn under subsection 45(3);
  - (c) both of the following apply:
    - (i) the Minister has decided under subsection 46(1) to not approve an application in relation to the information that was made under subsection 44(1);
    - (ii) any reconsideration and review rights under sections 47 and 48 in relation to the decision have been exhausted or have expired.

## Division 4—Other information sharing matters

### 62 Public disclosure of Advisory Committee recommendations

If the Minister considers that it is appropriate to do so, the Minister may publicly disclose a recommendation made by the Advisory Committee in advising the Minister about a matter referred to in paragraph 28(a).

### 63 Disclosure of protected IC information to the Minister

- (1) An entrusted IC person may disclose protected IC information to the Minister if the person reasonably believes that the disclosure of the information will assist in the performance of the Minister's functions, or the exercise of the Minister's powers, under:
  - (a) this Act; or
  - (b) the decision-making principles; or
  - (c) the rules.
- (2) An entrusted IC person may disclose protected IC information to the Minister for the purposes of:
  - (a) the *Industrial Chemicals Environmental Management (Register) Charge (Customs) Act 2021* or regulations made under that Act; or
  - (b) the *Industrial Chemicals Environmental Management (Register) Charge (Excise) Act 2021* or regulations made under that Act; or
  - (c) the *Industrial Chemicals Environmental Management (Register) Charge (General) Act 2021* or regulations made under that Act.

Note: This section authorises the disclosure of protected IC information for purposes of paragraph 115(1)(e) of the Industrial Chemicals Act.

## **64 Disclosure of personal information to the Minister etc.**

- (1) An entrusted IC person may disclose personal information to the Minister if the person reasonably believes that the disclosure of the information will assist in the performance of the Minister's functions, or the exercise of the Minister's powers, under:
  - (a) this Act; or
  - (b) the decision-making principles; or
  - (c) the rules.
- (2) An entrusted IC person may disclose personal information to the Minister for the purposes of:
  - (a) the *Industrial Chemicals Environmental Management (Register) Charge (Customs) Act 2021* or regulations made under that Act; or
  - (b) the *Industrial Chemicals Environmental Management (Register) Charge (Excise) Act 2021* or regulations made under that Act; or
  - (c) the *Industrial Chemicals Environmental Management (Register) Charge (General) Act 2021* or regulations made under that Act.
- (3) An entrusted person may use or disclose personal information disclosed to the Minister under subsection (1) or (2) if the use or disclosure is for the purposes of:
  - (a) this Act; or
  - (b) the *Industrial Chemicals Environmental Management (Register) Charge (Customs) Act 2021* or regulations made under that Act; or
  - (c) the *Industrial Chemicals Environmental Management (Register) Charge (Excise) Act 2021* or regulations made under that Act; or
  - (d) the *Industrial Chemicals Environmental Management (Register) Charge (General) Act 2021* or regulations made under that Act; or
  - (e) the Register; or
  - (f) the decision-making principles; or

**Part 4** Confidentiality and information sharing

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(g) the rules.

Note: A disclosure or use of personal information made in accordance with this section is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6.

## **Division 5—Civil penalties**

### **65 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 it applies in relation to the civil penalty provisions of this Act:
- (a) the Minister is an authorised applicant; and
  - (b) each of the following is a relevant court:
    - (i) the Federal Court;
    - (ii) the Federal Circuit and Family Court of Australia (Division 2);
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

#### *Extension to external Territories*

- (3) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to the external Territories.

## Part 5—Scheduling charge

### 66 Simplified outline of this Part

This Part deals with scheduling charge.

A registered introducer for a registration year is liable to pay scheduling charge for the registration year. Scheduling charge is due and payable at the same time that registration charge is due and payable by the registered introducer for the registration year.

The rules may make provision for, or in relation to the collection and recovery of scheduling charge.

### 67 Liability to pay scheduling charge

A registered introducer for a registration year is liable to pay scheduling charge for the registration year.

### 68 When scheduling charge is due for payment

Scheduling charge payable by a registered introducer for a registration year is due and payable at the same time that registration charge that is payable by the registered introducer for the registration year is due and payable.

### 69 Rules may make provision for etc. the collection and recovery of scheduling charge

- (1) The rules may make provision for, or in relation to, the collection and recovery of scheduling charge.
- (2) Without limiting subsection (1), the rules may make provision for, or in relation to, any one or more of the following matters:

- (a) the payment of a penalty for the late payment of scheduling charge;
- (b) the refund, remission or waiver of scheduling charge;
- (c) the overpayment or underpayment of scheduling charge;
- (d) the payment of a penalty for the underpayment of scheduling charge;
- (e) the giving of information and keeping of records relating to a person's liability to pay scheduling charge.

**70 Recovery of scheduling charge and late payment penalty etc.**

- (1) Scheduling charge that is due and payable:
  - (a) is a debt due to the Commonwealth; and
  - (b) may be recovered by the Executive Director, on behalf of the Commonwealth, in:
    - (i) the Federal Court; or
    - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (2) If a penalty for the late payment, or the underpayment, of scheduling charge is due and payable, the penalty:
  - (a) is a debt due to the Commonwealth; and
  - (b) may be recovered by the Executive Director, on behalf of the Commonwealth, in:
    - (i) the Federal Court; or
    - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

## Part 6—Miscellaneous

### 71 Simplified outline of this Part

This Part deals with miscellaneous matters such as the functions of the Executive Director, consultants, delegations and rules.

### 72 Functions of Executive Director relating to this Act etc.

The Executive Director has the following functions:

- (a) to assist the Minister in the performance of the Minister's functions, or the exercise of the Minister's powers, under:
  - (i) this Act; or
  - (ii) the decision-making principles; or
  - (iii) the rules;
- (b) to collect and recover scheduling charge payable by a registered introducer for a registration year;
- (c) to perform any other functions conferred on the Executive Director by the rules.

### 73 Engagement of consultants to assist the Minister

The Minister may, on behalf of the Commonwealth, engage consultants to assist the Minister in the performance of the Minister's functions, or the exercise of the Minister's powers, under:

- (a) this Act; or
- (b) the decision-making principles; or
- (c) the rules.



**74 Delegation by the Minister***Functions or powers under this Act etc.*

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under this Act, the decision-making principles or the rules to the following:
  - (a) the Secretary of the Environment Department;
  - (b) an SES employee, or acting SES employee, in the Environment Department;
  - (c) a person who holds, or is acting in, an Executive Level 1 or 2, or equivalent, position in the Environment Department.
- (2) Despite subsection (1), the Minister must not delegate the Minister's functions or powers under the following provisions of this Act:
  - (a) section 23 (which deals with decision-making principles);
  - (b) section 30 (which deals with the appointment of Advisory Committee members);
  - (c) section 38 (which deals with the termination of appointment of Advisory Committee members);
  - (d) section 76 (which deals with the making of rules).

*Functions or powers as authorised applicant*

- (3) The Minister may, in writing, delegate all or any of the functions or powers the Minister has as an authorised applicant for the purposes of Part 4 of the Regulatory Powers Act to the following:
  - (a) the Secretary of the Environment Department;
  - (b) an SES employee, or acting SES employee, in the Environment Department;
  - (c) a person who holds, or is acting in, an Executive Level 1 or 2, or equivalent, position in the Environment Department.

Note: Paragraph 65(2)(a) provides that the Minister is an authorised applicant for the purposes of Part 4 of the Regulatory Powers Act as it applies in relation to the civil penalty provisions of this Act.

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### *Directions to delegates*

- (4) A person exercising powers or performing functions under a delegation under subsection (1) or (3) must comply with any written directions of the Minister.

## **75 Delegation by Executive Director**

- (1) The Executive Director may, in writing, delegate all or any of the Executive Director's functions or powers under this Act or the rules to the following:
  - (a) an SES employee, or acting SES employee, in the Environment Department or the Health Department;
  - (b) a person who holds, or is acting in, an Executive Level 1 or 2, or equivalent, position in the Environment Department or the Health Department.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the Executive Director.

## **76 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.

Note: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the *Legislation Act 2003* do not apply to the instrument: see subsections 44(1) and 54(1) of that 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;

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- (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, a matter contained in an instrument or writing:
- (a) as in force or existing at a particular time; or
  - (b) 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 how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to 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)<br>/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<br>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<br>effect               | SLI = Select Legislative Instrument                                    |
| (md not incorp) = misdescribed amendment<br>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<br>commenced or to be commenced |

## Endnote 3—Legislation history

## Endnote 3—Legislation history

| Act   | Number and year | Assent       | Commencement                                 | Application, saving and transitional provisions |
|---|-----------------|--------------|--|---|
| Industrial Chemicals Environmental Management (Register) Act 2021 | 27, 2021        | 26 Mar 2021  | 27 Mar 2021 (s 2(1) item 1)                  |   |
| Industrial Chemicals Legislation Amendment Act 2021               | 31, 2021        | 26 Mar 2021  | Sch 3: 1 Sept 2021 (s 2(1) item 4)           | —   |
| Members of Parliament (Staff) Amendment Act 2023                  | 71, 2023        | 19 Sept 2023 | Sch 4 (item 16): 17 Oct 2023 (s 2(1) item 5) | —   |

Endnotes

Endnote 4—Amendment history

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Endnote 4—Amendment history

| Provision affected | How affected                |
|--------------------|-----------------------------|
| <b>Part 1</b>      |                             |
| s 7 .....          | am No 31, 2021; No 71, 2023 |
| <b>Part 4</b>      |                             |
| <b>Division 5</b>  |                             |
| s 65 .....         | am No 31, 2021              |
| <b>Part 5</b>      |                             |
| s 70 .....         | am No 31, 2021              |