



ACT
Government

REGULATORY IMPACT STATEMENT

Environment Protection (Industrial Chemicals) Amendment Regulation 2025 (No 1)

SL2025-17

Prepared in accordance with *Legislation Act 2001*, section 35

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Overview

This regulatory impact statement (RIS) relates to the *Environment Protection (Industrial Chemicals) Amendment Regulation 2025 (No 1)* (the proposed law). The proposed law will introduce the [Industrial Chemicals Environmental Management Standard](#) (IChEMS) into the [Environment Protection Regulation 2005](#) (EP Regulation), including a new strict liability offence related to compliance with IChEMS scheduling decisions for industrial chemicals, made under the [Industrial Chemicals Environment Management \(Register\) Act 2021 \(Cwlth\)](#) (the ICEMR Act).

The proposed law will provide for certain industrial chemicals to be taken to cause environmental harm and that a person must comply with prohibitions, restrictions and other risk management measures specified in an IChEMS scheduling decision for the manufacture or the end use of an industrial chemical, or an article or product containing an industrial chemical.

This RIS was prepared in accordance with section 35 of the *Legislation Act 2001* and provides an analysis of the regulatory impact of amendments to the EP Regulation. It outlines the relevant policy issue, considers the need for and objectives of government action and alternative options for addressing the policy problem, and the costs and benefits of the preferred option.

It is noted that amendments to Schedule 1, Part 1.2 of the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* are also being proposed separately, to include the new offences in the infringement notice scheme for the EP Regulation.

Background

Industrial chemicals are contained in many products in Australia and may be harmful to human health and the environment if they are not managed properly. Understanding where these chemicals come from and how they are used, and having effective controls in place, is key to minimise chemical pollution.

The use of chemicals is regulated by states and territories under their respective legislation. Chemical use is regulated in the ACT under the [Environment Protection Act 1997](#) (the EP Act) and the EP Regulation. This legislation is administered by the Environment Protection Authority (EPA) in Access Canberra. The EP Act requires people to take practicable and reasonable steps to prevent or minimise environmental harm and provides offences for failing to take such steps (the General Environmental Duty).

The Commonwealth, state and territory governments are working together on the implementation of IChEMS. It is a national approach that will deliver more consistent regulation and strengthen the management of industrial chemicals across all jurisdictions. It aims to improve the way industrial chemicals are used, produced, imported, and disposed.

Following agreement by all Australian environment ministers, the [Australia's industrial chemicals roadmap - Better environmental management of chemicals](#) was released in March 2022. It sets out how Australia is delivering the new IChEMS framework. The ICEMR Act was established in December 2022, and its scheduling decisions include prohibitions, exemptions and risk management measures (RMMs) for each industrial chemical listed on the IChEMS Register. RMMs detail how the industrial chemical must be used including its disposal to minimise the risks to human health and the environment.

The [Industrial Chemicals Environmental Management \(Register\) Instrument 2022](#) (IChEMS Register) lists industrial chemicals under seven schedules based on their risk category, from lowest to greatest risk to the environment. An [Online Register](#) is available and updated on a regular basis to facilitate access to listed chemicals and scheduling decisions.

Information required by section 35 of the *Legislation Act 2001*

(a) The Authorising Law

The EP Act is the authorising law for the proposed law. Section 166 of the EP Act provides that a regulation can be made in relation to the use of a specified pollutant, article or other thing. The proposed amendment to the EP Regulation proposes to make it an offence to not use an industrial chemical listed in the IChEMS Register in accordance with a scheduling decision made for that chemical under the ICEMR Act.

The proposed amendments support the objects of the EP Act. The objects of the EP Act, at section 3C, include:

- to protect and enhance the quality of the environment;
- to prevent environmental degradation and risk of harm to human health by promoting pollution prevention;
- require people engaging in polluting activities to make progressive environmental improvements; and
- facilitate the implementation of national environment protection measures under national scheme laws.

Among others, the principle of a shared responsibility for the environment and the precautionary principle apply to the EP Act and are relevant to the proposed law. In addition, according to section 22 of the EP Act, a person has a ‘general environmental duty’ and must take the steps that are practicable and reasonable to prevent or minimise environmental harm or environmental nuisance caused, or likely to be caused, by an activity conducted by that person.

(b) Policy objectives of the proposed law

Amendments to the EP Regulation will facilitate the ACT’s implementation of the IChEMS reforms in the ACT. The proposed law will encourage industry compliance with the ‘general environmental duty’ under section 22 of the EP Act when managing industrial chemicals by improving the way those industrial chemicals are used, produced, imported, and disposed.

(c) Achieving the policy objectives

The IChEMS aims to improve chemicals management. It will increase awareness of the environmental risk of chemicals and provide information on safer alternatives. As more industrial chemicals are listed in the IChEMS Register, it will be easier for industry to choose less harmful chemicals.

Implementation of IChEMS will deliver greater protection of the environment through consistent regulation and strengthen the management of industrial chemicals, improving the way industrial chemicals are used, produced, imported, and disposed in the ACT.

(d) Consistency of the proposed law with the authorising law

The proposed law seeks to support the operation of the EP Act by promoting the objects of the EP Act including: protecting and enhancing the quality of the environment and preventing environmental degradation and risk of harm to human health.

(e) Inconsistency with the policy objectives of another territory law

The proposed law is not inconsistent with the policy objectives of any other Territory law. Adoption of IChEMS into ACT's regulatory framework will ensure comparable protections across Australia and bring greater consistency for businesses.

(f) Reasonable alternatives to the proposed law

Three options have been considered for achieving the policy objectives:

Option 1: No regulation

This does not meet the ACT Government's commitment to the implementation of a nationally consistent regulatory framework for IChEMS.

Option 2: Guidelines

This is not considered to be feasible due to the need for enforceability of agreed national harmonisation reforms for the use, production, import and disposal of industrial chemicals, and for consistency with approaches nationally.

In addition to the proposed regulatory reforms, guidelines and policies have been updated to facilitate the implementation of IChEMS in the ACT, more specifically the Hazardous Materials Environment Protection Policy (HM EPP) made under the *Environment Protection Act 1997* and the Environmental Risk Assessment Guide for Business (the Guide). The HM EPP specifies management controls that are required for specific types of hazardous materials, some of which are subject of national and international agreements. The Guide provides guidance to business on meeting their 'general environmental duty' to protect human health and the environment in managing their activities which includes the use of industrial chemicals.

Option 3: Amend the Regulation

The proposed law aligns with a nationally consistent framework for managing industrial chemicals. It represents the most positive outcome for the community due to benefits associated with requirements for the environmental management of industrial chemicals. Option 3 minimises the risk to human health and the environment and provides clarity and consistency for businesses operating across state and territory borders. It is the only option that supports all government commitments and the objectives of government action.

(g) brief assessment of the benefits and costs of the proposed law

As part of the IChEMS implementation, consideration is given to the nature of risk management measures and how the transition will impact industry. Each standard includes a commencement date to support industry to make necessary changes.

There are no significant appreciable costs associated with the amendments to the regulation for industry or government. For lower concern chemicals, obligations centre on industry meeting the IChEMS Minimum Standards, which are baseline requirements that align with existing environment,

health, safety, and duty of care obligations. This means that businesses will likely already meet all or most of the IChEMS Minimum Standards and not require a lengthy transition.

For higher concern chemicals, tighter controls such as prohibitions or severe restrictions are warranted. This change is expected to be more complex, and the commencement date will provide for a longer transition period. In some circumstances there may also be additional phase out dates. There are no heavy industries in the ACT and it is unlikely that additional requirements for the use of higher concern chemicals will have significant financial impacts on industrial processes in the ACT. Any minor financial impact that may arise for industry is justifiable due to the increase in safety for human health and the environment and the benefits to industry that come from a nationally consistent framework.

The changes will deliver regulatory efficiencies by specifying that environmental harm provisions apply to the use of sets of chemicals, without the need for additional investigations to determine that harm has occurred. It will be cost effective for industry because it provides clarity and certainty about chemicals which must be avoided.

(h) Consistency of the proposed law with Scrutiny of Bills Committee Principles

The proposed law is consistent with the Standing Committee on Legal Affairs (Legislative Scrutiny Role) Terms of Reference, as the proposed law:

- i. is in accord with the general objects of the EP Act;
- ii. does not unduly trespass on rights established by law; and
- iii. does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.
- iv. Does not contain matters which should properly be dealt with in an Act of the Legislative Assembly.

In relation to consideration of human rights, it is noted that the proposed law seeks to introduce a new strict liability offence. A strict liability offence engages the presumption of innocence under section 22(1) of the *Human Rights Act 2004* because it allows for the offence to be proven without the need to prove fault.

The new strict liability offence is intended to deter people from failing to comply with scheduling decisions for industrial chemicals, which are listed in the Industrial Chemicals Environmental Management (Register) Instrument 2022 under seven schedules based on their risk category, from lowest to greatest risk to the environment. An Online Register is available and updated on a regular basis to facilitate access to listed chemicals and scheduling decisions.

The proposed use of a strict liability offence is appropriate because the offence only applies to the industrial use of scheduled industrial chemicals or articles or products containing an industrial chemical, and to persons or entities who know or ought to know their legal obligations. The IChEMS are central in a nationally consistent framework to support the prevention of serious detriment to human health and the environment.

These matters are further addressed in the explanatory statement to the proposed law.