





# **Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act 2019**

**No. 13, 2019**

**An Act to deal with consequential and transitional  
matters arising from the enactment of the *Industrial  
Chemicals Act 2019*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**No. 13, 2019**

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**An Act to deal with consequential and transitional matters arising from the enactment of the *Industrial Chemicals Act 2019*, and for related purposes**

*[Assented to 12 March 2019]*

The Parliament of Australia enacts:

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*No. 13, 2019      Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act 2019      1*

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## 1 Short title

This Act is the *Industrial Chemicals (Consequential Amendments and Transitional Provisions) 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 March 2019
2. Schedules 1 and 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Industrial Chemicals Act 2019</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2020 (paragraph (b) applies)

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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Repeals and amendments of Acts**

### **Part 1—Repeals of Acts**

#### ***Industrial Chemicals (Notification and Assessment) Act 1989***

##### **1 The whole of the Act**

Repeal the Act.

#### ***Industrial Chemicals (Registration Charge—Customs) Act 1997***

##### **2 The whole of the Act**

Repeal the Act.

#### ***Industrial Chemicals (Registration Charge—Excise) Act 1997***

##### **3 The whole of the Act**

Repeal the Act.

#### ***Industrial Chemicals (Registration Charge—General) Act 1997***

##### **4 The whole of the Act**

Repeal the Act.

## **Part 2—Consequential amendments**

### ***Agricultural and Veterinary Chemicals Act 1994***

#### **5 Subsection 7(2)**

Omit “*Industrial Chemicals (Notification and Assessment) Act 1989*”,  
substitute “*Industrial Chemicals Act 2019*”.

### ***Criminal Code Act 1995***

#### **6 Paragraph 320.2(2)(i) of the *Criminal Code***

Omit “*Industrial Chemicals (Notification and Assessment) Act 1989*”,  
substitute “*Industrial Chemicals Act 2019*”.

### ***Trans-Tasman Mutual Recognition Act 1997***

#### **7 Clause 3 of Part 2 of Schedule 2**

Omit “*Industrial Chemicals (Notification and Assessment) Act 1989*”,  
substitute “*Industrial Chemicals Act 2019*”.

## Schedule 2—Application, savings and transitional provisions

### Part 1—Preliminary

#### 1 Interpretation

- (1) In this Schedule:

**confidential section** of the old Inventory means the section of the old Inventory referred to in subsections 12(4) and (4A) of the old law.

**Director** means the Director, National Industrial Chemicals Notification and Assessment Scheme, appointed under section 90 of the old law.

**new law** means the *Industrial Chemicals Act 2019* and any rules made under that Act.

**new Register** means the Register established under section 14 of the new law.

**non-confidential section** of the old Inventory means the section of the old Inventory referred to in subsection 12(3) of the old law.

**old Inventory** means the Australian Inventory of Chemical Substances referred to in section 11 of the old law.

**old law** means the *Industrial Chemicals (Notification and Assessment) Act 1989*, and any regulations made under that Act, as in force immediately before 1 July 2020.

**transitional rules** means rules made under item 50.

- (2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.

## **Part 2—Application and savings provisions**

### **2 Registration charge**

- (1) Despite the repeal of the old law by Part 1 of Schedule 1, the old law continues to apply on and after 1 July 2020 in relation to registration charge imposed before that day.
- (2) Despite the repeal of the *Industrial Chemicals (Registration Charge—Customs) Act 1997* by Part 1 of Schedule 1, that Act, as in force immediately before 1 July 2020, continues to apply on and after that day in relation to registration charge imposed before that day.
- (3) Despite the repeal of the *Industrial Chemicals (Registration Charge—Excise) Act 1997* by Part 1 of Schedule 1, that Act, as in force immediately before 1 July 2020, continues to apply on and after that day in relation to registration charge imposed before that day.
- (4) Despite the repeal of the *Industrial Chemicals (Registration Charge—General) Act 1997* by Part 1 of Schedule 1, that Act, as in force immediately before 1 July 2020, continues to apply on and after that day in relation to registration charge imposed before that day.

### **3 Registration for registration year beginning on 1 September 2019 and earlier years**

Despite the repeal of the old law by Part 1 of Schedule 1, the old law continues to apply on and after 1 July 2020 in relation to registration for:

- (a) the registration year beginning on 1 September 2019; and
- (b) each earlier registration year.

### **4 Early introduction permits**

- (1) Despite the repeal of the old law by Part 1 of Schedule 1:
  - (a) section 30A of the old law continues to apply in relation to an application (the *related application*) for an assessment certificate for an industrial chemical made under section 23 or 23A of the old law, until a decision is made on the related application; and

(b) until that decision is made, a permit granted under subsection 30A(3) of the old law is taken to be an authorisation for the introduction of the industrial chemical for the purposes of paragraph 24(1)(b) of the new law so long as the introduction is in accordance with any conditions that are specified in the permit under subsection 30A(10) of the old law.

- (2) To avoid doubt, subitem (1) does not limit the operation of item 13 (which deals with pending applications for assessment certificates).

### **5 Review of decisions made before 1 July 2020**

Despite the repeal of the old law by Part 1 of Schedule 1, section 102 of that Act, as in force immediately before 1 July 2020, continues to apply in relation to a decision made before that day.

## **Part 3—Persons appointed under old law**

### **6 Director under old law**

- (1) This item applies to a person who was, immediately before 1 July 2020, the Director under section 90 of the old law.
- (2) For the purposes of the new law, on and after 1 July 2020, the person is taken to have been appointed as the Executive Director under section 143 of the new law.
- (3) The person holds office, on and after 1 July 2020:
  - (a) on the terms and conditions that were applicable to the person immediately before that day; and
  - (b) for the balance of the person's term of appointment that remained immediately before that day.
- (4) Despite subitem (3), the Minister may, by writing, determine different terms and conditions (other than terms and conditions covered by a determination referred to in subitem (5)) that are to apply to the person for any part of the remaining balance of the person's term of appointment.
- (5) A determination in operation under the *Remuneration Tribunal Act 1973* immediately before 1 July 2020 in relation to the person:
  - (a) continues in operation until another determination comes into operation in substitution for it; and
  - (b) before then, may be varied in accordance with that Act.

### **7 Inspectors under old law**

A person who was, immediately before 1 July 2020, an inspector appointed under subsection 84(1) of the old law is taken, on and after that day, to have been appointed as an authorised inspector under section 137 of the new law.

## Part 4—Registration

### 8 Register of Industrial Chemical Introducers

The Register of Industrial Chemical Introducers that was kept under section 80C of the old law continues in existence, on and after 1 July 2020, in relation to the registration year beginning on 1 September 2019 by force of this item.

### 9 Persons registered under old law

- (1) This item applies in relation to a person if, immediately before 1 July 2020, the person was registered under the old law in relation to the registration year beginning on 1 September 2020.
- (2) For the purposes of the new law, subject to any modifications prescribed by the transitional rules:
  - (a) the person is taken, on and after 1 July 2020, to be registered under the new law for the registration year beginning on 1 September 2020; and
  - (b) the person's registration number under the old law is taken to be the registration number allocated to the person under section 17 of the new law.
- (3) To avoid doubt, nothing in this item is taken to change the time at which the person was registered.

### 10 Pending applications for registration or renewal of registration

- (1) This item applies in relation to an application, if:
  - (a) the application is for:
    - (i) registration under section 80E of the old law; or
    - (ii) renewal of registration under section 80K of the old law; and
  - (b) the application is in relation to the registration year beginning on 1 September 2020; and
  - (c) the application is pending immediately before 1 July 2020.

- (2) For the purposes of the new law, subject to any modifications prescribed by the transitional rules, the application has effect, on and after 1 July 2020, as if it were an application made under section 16 of the new law.

## **Part 5—Assessment certificates etc.**

### **Division 1—Assessment certificates**

#### **11 Assessment certificates issued under old law**

- (1) This item applies in relation to an assessment certificate for an industrial chemical that is in force under the old law immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the assessment certificate is taken, on and after 1 July 2020, to be an assessment certificate issued for the industrial chemical under the new law; and
  - (b) the person who was, immediately before 1 July 2020, the holder in relation to the assessment certificate is taken to be the holder of the assessment certificate under the new law; and
  - (c) if the assessment certificate has been extended under the old law to cover a person—the person is taken to be covered by the assessment certificate under the new law; and
  - (d) the terms of the assessment certificate under the old law are taken to be the terms of the assessment certificate under the new law; and
  - (e) the notification obligations under subsections 64(1) and (2) of the old law are taken to be specific requirements to provide information to the Executive Director under paragraph 38(1)(d) of the new law.
- (3) To avoid doubt, nothing in this item is taken to change the time at which the assessment certificate was issued.

#### **12 Publication requirements for assessment statements**

Subsections 49(6), 50(8) and 52(7) of the new law do not apply in relation to an assessment certificate that is taken to have been issued under the new law in accordance with item 11.

### **13 Pending applications for assessment certificates**

- (1) This item applies in relation to an application, if:
  - (a) the application is for an assessment certificate for an industrial chemical under section 23 of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules, the application has effect, on and after 1 July 2020, as if it were an application for an assessment certificate for the introduction of the industrial chemical made under section 31 of the new law.

### **14 Consultation required with prescribed bodies**

Section 34 of the new law does not apply in relation to an application for an assessment certificate that is taken to have been made under the new law in accordance with item 13.

### **15 Conditions on assessment certificate**

Subsection 38(2) of the new law does not apply in relation to an assessment certificate that:

- (a) is taken to have been issued under the new law in accordance with item 11; or
- (b) is issued under the new law in accordance with item 13.

### **16 Publication requirements for assessment statements**

Subsection 37(7) of the new law does not apply in relation to an assessment certificate that is issued under the new law in accordance with item 13.

## **Division 2—Commercial evaluation permits**

### **17 Commercial evaluation permits issued under old law**

- (1) This item applies in relation to a commercial evaluation permit for the introduction of an industrial chemical that is in force under the old law immediately before 1 July 2020.
  - (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
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- (a) the commercial evaluation permit is taken, on and after 1 July 2020, to be a commercial evaluation authorisation for the introduction of the industrial chemical issued under the new law; and
- (b) the person who was, immediately before 1 July 2020, the holder of the commercial evaluation permit is taken to be the holder of the commercial evaluation authorisation under the new law; and
- (c) the terms of the commercial evaluation permit under the old law are taken to be the terms of the commercial evaluation authorisation under the new law; and
- (d) the conditions the commercial evaluation permit is subject to under subsection 21L(1) of the old law are taken to be conditions relating to the introduction or use of the industrial chemical under paragraph 59(1)(e) of the new law; and
- (e) the remaining period for which the commercial evaluation permit would have been in force under section 21K of the old law is taken to be the period for which the authorisation is in force under the new law.

## **18 Pending applications for commercial evaluation permits**

- (1) This item applies in relation to an application, if:
  - (a) the application is for a commercial evaluation permit relating to an industrial chemical under subsection 21B(1) of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules, the application has effect, on and after 1 July 2020, as if it were an application for a commercial evaluation authorisation for the introduction of the industrial chemical made under section 53 of the new law.

## **Division 3—Low volume permits**

### **19 Low volume permits issued under old law**

- (1) This item applies in relation to a low volume permit in respect of an industrial chemical that is in force under the old law immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the low volume permit is taken, on and after 1 July 2020, to be an assessment certificate issued for the industrial chemical under the new law; and
  - (b) the person who was, immediately before 1 July 2020, the holder of the low volume permit is taken to be the holder of the assessment certificate under the new law; and
  - (c) the terms of the low volume permit under the old law are taken to be the terms of the assessment certificate under the new law; and
  - (d) any conditions the low volume permit is subject to under subsection 21W(3) of the old law are taken to be conditions to which the assessment certificate is subject under paragraph 38(1)(c) of the new law; and
  - (e) the condition the low volume permit is subject to under subsection 21W(1) of the old law is taken to be a specific requirement to provide information to the Executive Director under paragraph 38(1)(d) of the new law; and
  - (f) section 39 of the new law applies in relation to the assessment certificate as if that section expressly limited the period for which the assessment certificate is in force to the remaining period for which the permit would have been in force under section 21V of the old law.

### **20 Publication requirements for assessment statements**

Subsections 49(6), 50(8) and 52(7) of the new law do not apply in relation to an assessment certificate that is taken to have been issued under the new law in accordance with item 19.

## 21 Pending applications for low volume permits

- (1) This item applies in relation to an application, if:
  - (a) the application is for a low volume permit in respect of an industrial chemical under subsection 21R(1) of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the application has effect, on and after 1 July 2020, as if it were an application for an assessment certificate for the introduction of the industrial chemical made under section 31 of the new law; and
  - (b) if the assessment certificate is issued—section 39 of the new law applies in relation to the assessment certificate as if that section expressly limited the period for which the assessment certificate is in force to the period of 3 years beginning the day the assessment certificate is issued under the new law.

## 22 Consultation required with prescribed bodies

Section 34 of the new law does not apply in relation to an application for an assessment certificate that is taken to have been made under the new law in accordance with item 21.

## 23 Conditions on assessment certificate

Subsection 38(2) of the new law does not apply in relation to an assessment certificate that:

- (a) is taken to have been issued under the new law in accordance with item 19; or
- (b) is issued under the new law in accordance with item 21.

## 24 Publication requirements for assessment statements

Subsection 37(7) of the new law does not apply in relation to an assessment certificate that is issued under the new law in accordance with item 21.

## **25 Listing on Inventory for low volume permits**

Section 83 of the new law does not apply in relation to an assessment certificate that:

- (a) is taken to have been issued under the new law in accordance with item 19; or
- (b) is issued under the new law in accordance with item 21.

## **Division 4—Controlled use permits**

### **26 Controlled use permits issued under old law**

- (1) This item applies in relation to a controlled use permit in respect of an industrial chemical that is in force under the old law immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the controlled use permit is taken, on and after 1 July 2020, to be an assessment certificate issued for the industrial chemical under the new law; and
  - (b) the person who was, immediately before 1 July 2020, the holder of the controlled use permit is taken to be the holder of the assessment certificate under the new law; and
  - (c) the terms of the controlled use permit under the old law are taken to be the terms of the assessment certificate under the new law; and
  - (d) the condition the controlled use permit is subject to under subsection 22H(1) of the old law is taken to be a condition to which the assessment certificate is subject under paragraph 38(1)(c) of the new law; and
  - (e) the condition the controlled use permit is subject to under subsection 22H(2) of the old law is taken to be a specific requirement to provide information to the Executive Director under paragraph 38(1)(d) of the new law; and
  - (f) section 39 of the new law applies in relation to the assessment certificate as if that section expressly limited the period for which the assessment certificate is in force to the remaining period for which the permit would have been in force under section 22G of the old law.

## **27 Publication requirements for assessment statements**

Subsections 49(6), 50(8) and 52(7) of the new law do not apply in relation to an assessment certificate that is taken to have been issued under the new law in accordance with item 26.

## **28 Pending applications for controlled use permits**

- (1) This item applies in relation to an application, if:
  - (a) the application is for a controlled use permit in respect of an industrial chemical under subsection 22B(1) of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the application has effect, on and after 1 July 2020, as if it were an application for an assessment certificate for the introduction of the industrial chemical made under section 31 of the new law; and
  - (b) if the assessment certificate is issued—section 39 of the new law applies in relation to the assessment certificate as if that section expressly limited the period for which the assessment certificate is in force to the period of 3 years beginning the day the assessment certificate is issued under the new law.

## **29 Consultation required with prescribed bodies**

Section 34 of the new law does not apply in relation to an application for an assessment certificate that is taken to have been made under the new law in accordance with item 28.

## **30 Conditions on assessment certificate**

Subsection 38(2) of the new law does not apply in relation to an assessment certificate that:

- (a) is taken to have been issued under the new law in accordance with item 26; or
- (b) is issued under the new law in accordance with item 28.

### **31 Publication requirements for assessment statements**

Subsection 37(7) of the new law does not apply in relation to an assessment certificate that is issued under the new law in accordance with item 28.

### **32 Listing on Inventory for controlled use permits**

Section 83 of the new law does not apply in relation to an assessment certificate that:

- (a) is taken to have been issued under the new law in accordance with item 26; or
- (b) is issued under the new law in accordance with item 28.

## **Division 5—Introductions under section 21 of old law**

### **33 Introductions under section 21 of old law**

- (1) This item applies in relation to the introduction of an industrial chemical if:
  - (a) the industrial chemical was introduced in the registration year beginning on 1 September 2019 under the old law; and
  - (b) the introduction was under paragraph 21(3)(b), subsection (4) or paragraph (6)(c) (the *authorising provisions*) of the old law; and
  - (c) the introduction complies with:
    - (i) the requirements of the relevant authorising provision, as if the relevant provision was still in force; and
    - (ii) regulations made in relation to the relevant authorising provision, as if those regulations were still in force; and
  - (d) the introduction is made before 1 July 2021.
- (2) For the purposes of the new law, subject to any modifications prescribed by the transitional rules:
  - (a) the introduction of the industrial chemical is taken, on and after 1 July 2020, to be authorised under section 27 of the new law; and
  - (b) the following are taken to be the terms of the pre-introduction report for the purposes of paragraph 27(1)(c) of the new law:
    - (i) the terms of the relevant authorising provision, as if the relevant provision was still in force;

- (ii) regulations made in relation to the relevant authorising provision, as if those regulations were still in force.

### **34 Introductions under paragraph 21(6)(a) of the old law**

- (1) This item applies in relation to the introduction of an industrial chemical if:
  - (a) the industrial chemical was introduced in the registration year beginning on 1 September 2019 under the old law; and
  - (b) the introduction was under paragraph 21(6)(a) of the old law; and
  - (c) the introduction complies with:
    - (i) the requirements of that paragraph, as if that paragraph was still in force; and
    - (ii) regulations made in relation to the relevant authorising provision, as if those regulations were still in force; and
  - (d) the introduction is made before 1 July 2021.
- (2) For the purposes of the new law, subject to any modifications prescribed by the transitional rules, the introduction of the industrial chemical is taken, on and after 1 July 2020, to be authorised under section 26 of the new law if the introduction continues to comply with:
  - (a) the requirements under paragraph 21(6)(a) of the old law, as if that paragraph was still in force; and
  - (b) regulations made in relation to the relevant authorising provision, as if those regulations were still in force.

## **Part 6—Protection of confidential information**

### **35 Holders of a confidence under old law**

- (1) This item applies in relation to a person if, immediately before 1 July 2020, the person was a holder of a confidence about an industrial chemical under the old law.
- (2) For the purposes of the new law, subject to any modifications prescribed by the transitional rules, the person is taken, on and after 1 July 2020, to be a confidence holder for an approval for the proper name or end use for the industrial chemical to be treated as confidential business information under the new law.

### **36 Applying to be a confidence holder in relation to confidential listings**

- (1) This item applies in relation to an industrial chemical that is listed on the Inventory with “confidential” in lieu of each term of the listing for the industrial chemical.
- (2) A person may apply to the Executive Director to be taken, for the purposes of the new law, subject to any modifications prescribed by the transitional rules, to be a confidence holder for an approval for the proper name or end use for the industrial chemical to be treated as confidential business information under the new law.
- (3) The Executive Director must grant the application if the Executive Director is satisfied that the publication of some or all of the terms of the Inventory listing for the industrial chemical could substantially prejudice the commercial interests of the applicant.
- (4) After considering the application, the Executive Director must decide to:
  - (a) approve the application; or
  - (b) not approve the application.
- (5) The Executive Director must:
  - (a) give the applicant written notice of:

- (i) the Executive Director's decision on the application;  
and
    - (ii) if the decision is to not approve the application—the reasons for the decision; and
  - (b) do so within 20 working days after the day the application is made.
- (6) Section 167 of the new law applies in relation to the application as if the application were an application made under the new law.

### **37 Pending applications for information to be treated as exempt information**

- (1) This item applies in relation to an application that certain information be treated as exempt information, if:
- (a) the application was made under section 21AAA, 21P, 21ZB, 22O, 25, 29, 30B, 40D, 42, 45, 50, 60, 66 or 89 of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to any modifications prescribed by the transitional rules, the application has effect, on and after 1 July 2020, as if it were an application made under subsection 113(2) of the new law in relation to the information.

### **38 Exempt information**

- (1) This item applies in relation to:
- (a) information that was treated as exempt information under the old law; and
  - (b) information for which an application to treat the information as confidential business information has been:
    - (i) made under subsection 113(2) of the new law, in accordance with item 37; and
    - (ii) approved under paragraph 114(2)(a) of the new law.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
- (a) the information is taken to be protected information; and

(b) sections 117, 119, 121, 122 and 124 of the new law do not apply in relation to the information.

## Part 7—Inventory

### Division 1—Industrial chemicals included in old Inventory

#### 39 Industrial chemicals included in old Inventory

- (1) This item applies if, immediately before 1 July 2020, an industrial chemical was included in the non-confidential section of the old Inventory.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the industrial chemical is taken, on and after 1 July 2020, to have been listed on the Inventory under the new law; and
  - (b) the approved particulars under paragraphs 12(3)(db), (f) and (g) of the old law are taken to be the terms of the Inventory listing for the industrial chemical under the new law.
- (3) To avoid doubt, nothing in this item is taken to change the time at which the industrial chemical was listed on the Inventory.

#### 40 Industrial chemicals included in confidential section of old Inventory

- (1) This item applies if, immediately before 1 July 2020, an industrial chemical was included in the confidential section of the old Inventory.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
  - (a) the industrial chemical is taken, on and after 1 July 2020, to have been listed on the Inventory under the new law; and
  - (b) the approved particulars under subsections 12(4) and (4A) of the old law are taken to be the terms of the Inventory listing for the industrial chemical under the new law; and
  - (c) Subdivisions A and B of Division 4 of Part 6 of the new law apply as if an application for the proper name for the industrial chemical to be treated as confidential business

information had been approved under subsection 108(1) of the new law; and

- (d) a reference in the new law to a requirement to publish an AACN in lieu of the proper name (including the CAS name, CAS number or molecular formula) for the industrial chemical were instead taken to be a requirement to publish “confidential” in lieu of each term of the Inventory listing for the industrial chemical.
- (3) To avoid doubt, nothing in this item is taken to change the time at which the industrial chemical was listed on the Inventory.

## **Division 2—Pending applications**

### **41 Pending applications for early listing in non-confidential section of old Inventory**

- (1) This item applies in relation to an application, if:
- (a) the application is for the inclusion of an industrial chemical in the non-confidential section of the old Inventory under section 13B of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules, the application has effect, on and after 1 July 2020, as if it were an application made under section 83 of the new law for the industrial chemical to be listed on the Inventory.

### **42 Pending applications for listing in confidential section of old Inventory**

- (1) This item applies in relation to an application if:
- (a) the application is for the inclusion of an industrial chemical in the confidential section of the old Inventory under subsection 14(3) of the old law; and
  - (b) the application is pending immediately before 1 July 2020.
- (2) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:

- (a) the application has effect, on and after 1 July 2020, as if it were an application made under subsection 105(1) of the new law for the proper name for the industrial chemical to be treated as confidential business information; and
- (b) subsection 82(2) of the new law applies as if:
  - (i) paragraph (2)(b) did not apply; and
  - (ii) paragraph (2)(c) were instead a requirement for a decision to have been made on the application and for the reconsideration and review rights under section 166 of the new law in relation to the decision to have been exhausted or have expired; and
  - (iii) paragraph (2)(d) did not apply; and
- (c) if the application is approved:
  - (i) paragraph 108(3)(a) of the new law does not apply in relation to the industrial chemical; and
  - (ii) a reference in the new law to a requirement to publish an ACN in lieu of the proper name (including the CAS name, CAS number or molecular formula) for an industrial chemical is instead taken to be a reference to a requirement to publish “confidential” in lieu of each term of the Inventory listing for the industrial chemical.

## **Division 3—Confidential listings**

### **43 Application for confidential listing**

- (1) This item applies in relation to an industrial chemical if:
  - (a) immediately before 1 July 2020 an assessment certificate for the industrial chemical was in force under the old law; and
  - (b) the Executive Director has given notice to a holder of the assessment certificate that the industrial chemical is to be listed on the Inventory; and
  - (c) the notice was given under subsection 14(2) of the old law or paragraph 82(2)(a) of the new law.
- (2) The holder of the assessment certificate may apply to the Executive Director for “confidential” to be published in lieu of each term of the Inventory listing for the industrial chemical.

- (3) For the purposes of the new law, subject to this Part and any modifications prescribed by the transitional rules:
- (a) an application made under subitem (2) is taken to be an application made under subsection 105(1) of the new law for the proper name for the industrial chemical to be treated as confidential business information; and
  - (b) subsection 82(2) of the new law applies as if:
    - (i) paragraph (2)(b) did not apply; and
    - (ii) paragraph (2)(c) were instead a requirement for a decision to have been made on the application and for the reconsideration and review rights under section 166 of the new law in relation to the decision to have been exhausted or have expired; and
    - (iii) paragraph (2)(d) did not apply; and
  - (c) if the application is approved:
    - (i) paragraph 108(3)(a) of the new law does not apply in relation to the industrial chemical; and
    - (ii) a reference in the new law to a requirement to publish an AACN in lieu of the proper name (including the CAS name, CAS number or molecular formula) for an industrial chemical is instead taken to be a reference to a requirement to publish “confidential” in lieu of each term of the Inventory listing for the industrial chemical.

#### **44 Variation of confidential listing**

Sections 85, 86, 87 and 93 of the new law apply in relation to an industrial chemical for which “confidential” must be published in lieu of each term of the Inventory listing for the industrial chemical, as if the requirements under those sections for the Executive Director to publish a notice were instead a requirement for the Executive Director to notify:

- (a) each confidence holder for an approval for the proper name or end use for the industrial chemical to be treated as confidential business information; and
- (b) if:
  - (i) a person has inquired of the Director, under subsection 18(2) of the old law, about whether the industrial chemical is included in the confidential section of the old Inventory; and

- (ii) the Director was satisfied, under paragraph 18(2)(b) of the old law, that the person intended to introduce the chemical;
- each such person; and
- (c) if subsection 120(2) of the new law applies to a person in relation to the industrial chemical—each such person.

#### **45 Removing industrial chemicals from Inventory on Executive Director’s initiative**

Section 95 of the new law applies in relation to an industrial chemical listed for which “confidential” must be published in lieu of each term of the Inventory listing for the industrial chemical, as if the requirements under that section for the Executive Director to publish a notice were instead a requirement for the Executive Director to notify:

- (a) each confidence holder for an approval for the proper name or end use for the industrial chemical to be treated as confidential business information; and
- (b) if:
  - (i) a person has inquired of the Director, under subsection 18(2) of the old law, about whether the industrial chemical is included in the confidential section of the old Inventory; and
  - (ii) the Director was satisfied, under paragraph 18(2)(b) of the old law, that the person intended to introduce the chemical;each such person; and
- (c) if subsection 120(2) of the new law applies to a person in relation to the industrial chemical—each such person.

#### **46 Review of protection**

Section 110 of the new law applies in relation to an industrial chemical that was included in the confidential section of the old Inventory as if:

- (a) the reference in paragraph 110(1)(a) of the new law to 5 years having passed since notice of the approval was given were instead a reference to 5 years having passed since the industrial chemical was included in the confidential section of the old Inventory; and

- (b) a review of the inclusion of the industrial chemical in the confidential section of the old Inventory under section 19 of the old law were taken to be a review under section 110 of the new law.

## Part 8—Miscellaneous

### 47 Reconsideration and review of decisions

Section 166 of the new law applies as if the table in subsection (1) of that section included the following item at the end of the table:

- |    |  |   |
|----|--|---|
| 21 | A decision to not approve an application for a person to be taken to be a confidence holder for an approval for the proper name or end use for an industrial chemical to be treated as confidential business information | Paragraph 36(4)(b) of the <i>Industrial Chemicals (Consequential Amendments and Transitional Provisions) Act 2019</i> |
|----|--|---|

### 48 Things done by, or in relation to, the Director, before 1 July 2020

- (1) Anything done by, or in relation to, the Director under the old law before 1 July 2020 has effect on and after that day as if it had been done by the Executive Director under the new law. However, this is not taken to change the time at which the thing was actually done.
- (2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Director before 1 July 2020.
- (3) A determination made under subitem (2) is not a legislative instrument.

### 49 Compensation for acquisition of property

- (1) If the operation of this Act, or the transitional rules, 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.

## **50 Transitional 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) The rules may also prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
    - (a) the repeals or amendments made by this Act; or
    - (b) the enactment of this Act or the *Industrial Chemicals Act 2019*.
  - (3) Without limiting subitem (1) or (2), rules made before 1 July 2022 may provide that this Act or any other Act or instrument has effect with any modifications prescribed by the rules.
  - (4) Subsection 12(2) of the *Legislation Act 2003* does not apply to rules made before 1 July 2022.
- Note: Subsection 12(2) of the *Legislation Act 2003* is about the retrospective application of legislative instruments.
- (5) 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.
  - (6) This Act (other than subitem (5)) does not limit the rules that may be made.

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*[Minister's second reading speech made in—  
House of Representatives on 1 June 2017  
Senate on 18 October 2017]*

(99/17)

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32      *Industrial Chemicals (Consequential Amendments and Transitional  
Provisions) Act 2019*      No. 13, 2019