



# Australian Government

## EXPOSURE DRAFT

### Industrial Chemicals Environmental Management (Register) Bill 2020

#### Explanatory Note

#### Industrial Chemicals Environmental Management (Register) Principles

Division 4 of Part 2 of the Industrial Chemicals Environmental Management (Register) Bill 2020 (the ICEMR Bill) allows the Minister to determine principles to be complied with when making, varying or revoking scheduling decisions<sup>1</sup> for industrial chemicals.

Throughout this Explanatory Note, a reference to an industrial chemical includes a reference to a class of industrial chemicals.

#### What is the purpose of the ICEMR Principles?

The Industrial Chemicals Environmental Management (Register) Principles (the ICEMR Principles) implement a key component of the National Standard for the environmental risk management of industrial chemicals (the National Standard)<sup>2</sup>, namely the criteria for assigning an industrial chemical to a Schedule (see Table B-1 in Appendix B to the National Standard).

The ICEMR Bill prohibits the Minister from making a scheduling decision until the ICEMR Principles are in force. The ICEMR Bill also requires the Minister to comply with the ICEMR Principles when making, varying or revoking a scheduling decision for an industrial chemical.

The ICEMR Principles define the risk characteristics of an industrial chemical and its proposed use, which in turn determines which Schedule of the Industrial Chemicals Environmental Management (Register) Instrument (the ICEM Register)<sup>3</sup> an industrial chemical should be listed in.

#### Risk characteristics of an industrial chemical (Part 2 of the ICEMR Principles)

The risk characteristics are determined by considering the level of concern to the environment arising from the inherent characteristics and the proposed use of an industrial chemical. The risk characteristics are based on information considered during an environmental risk assessment, such as the proposed volume and use of the industrial chemical. Table 1 describes the level of concern associated with each schedule.

For example, a chemical has *Schedule 1 risk characteristics* if a risk assessment for the chemical states that the environmental hazard for the chemical is categorised as low, or the chemical is not hazardous, and it does not meet the criteria to be classified as having the risk

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<sup>1</sup> For further information see the Explanatory Note for Scheduling Decisions.

<sup>2</sup> Available at the Australian Government Department of the Environment and Energy's webpage: <https://www.environment.gov.au/protection/chemicals-management>.

<sup>3</sup> For further information see the Explanatory Note for the Industrial Chemicals Environmental Management (Register) Instrument.

characteristics for the other Schedules. A chemical has *Schedule 5 risk characteristics* if, for example, the chemical is persistent and bioaccumulative, or is persistent and toxic<sup>4</sup>. In addition, an industrial chemical, or use of industrial chemical, will have *Schedule 7 risk characteristics* if, for example, it is persistent, bioaccumulative and toxic and has viable alternatives.

If an industrial chemical, or a particular use of the industrial chemical, is classified as having the risk characteristics for a particular Schedule, the Minister is required to list the industrial chemical, or use of the industrial chemical, in that Schedule of the ICEM Register. This ensures that scheduling decisions are made in a consistent, transparent and predictable way.

**Table 1: Risk characteristics of industrial chemicals**

Risk characteristics	Description of chemicals that would meet the criteria for the risk characteristics	Schedule of the ICEM Register
Schedule 1 risk characteristics	Industrial chemicals that meet these criteria are low concern chemicals of low or no hazard	Schedule 1
Schedule 2 risk characteristics	Industrial chemicals that meet these criteria are low concern chemicals of low risk	Schedule 2
Schedule 3 risk characteristics	Industrial chemicals that meet these criteria are intermediate concern chemicals of moderate risk	Schedule 3
Schedule 4 risk characteristics	Industrial chemicals that meet these criteria are intermediate concern chemicals of high risk	Schedule 4
Schedule 5 risk characteristics	Industrial chemicals that meet these criteria are intermediate concern chemicals of high risk with long-lasting impacts	Schedule 5
Schedule 6 risk characteristics	Industrial chemicals that meet these criteria are high concern, restricted chemicals	Schedule 6
Schedule 7 risk characteristics	Industrial chemicals that meet these criteria are high concern, prohibited chemicals	Schedule 7

Different uses of the same industrial chemical could be listed in different Schedules of the ICEM Register. This is because each proposed use of that industrial chemical may pose different risks, which will inform whether it meets the risk characteristics for a particular Schedule.

#### **How are the ICEMR Principles made? (Division 4 of Part 2 of the ICEMR Bill)**

The ICEMR Principles are a legislative instrument for the purposes of the *Legislation Act 2003* and, once made, will be publicly available on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)) and tabled in both Houses of the Parliament of the Commonwealth of Australia. As they give effect to an intergovernmental scheme, the ICEMR Principles will not be subject to the disallowance or sunset provisions of the *Legislation Act 2003*.

<sup>4</sup> The terms *persistent*, *bioaccumulative* and *toxic* are defined in the Information Paper – Criteria used to categorise an organic chemical as Persistent, Bioaccumulative and/or Toxic. It is intended this Information Paper will be incorporated by reference, as in force from time to time, into the ICEMR Principles.

The ICEMR Principles may apply, adopt, or incorporate other documents, such as international or national environmental management guidelines as necessary (for example, the Globally Harmonized System of Classification and Labelling of Chemicals, published by the United Nations).

### ***Consultation requirements***

The ICEMR Principles set out the criteria for how industrial chemicals will be assigned to a Schedule and are therefore a key part of the reform. As such, prior to making the ICEMR Principles, the ICEMR Bill requires the Minister to consult with state and territory Environment Ministers. Public consultation must also be undertaken, including with state and territory agencies, for at least 20 business days. The Minister must consider all relevant submissions. The Minister may also seek the advice of the Advisory Committee<sup>5</sup> when making the ICEMR Principles.

It is also intended that a non-statutory ‘Jurisdictional Board’ will be established, with representatives from all jurisdictions. The terms of reference for the Jurisdictional Board will be developed in consultation with all jurisdictions. The terms of reference may include the manner in which states and territories will be consulted in relation to the ICEMR Principles and in making scheduling decisions.

### **Variation and revocation of the ICEMR Principles**

Under the ICEMR Bill, the power to make the ICEMR Principles also includes the power to vary or revoke the ICEMR Principles<sup>6</sup>.

The consultation requirements that apply to the making of the ICEMR Principles will also apply to the variation or revocation of the ICEMR Principles, except in relation to minor variations. In this instance, no public consultation is required as it is intended that minor variations will not change the substance of the ICEMR Principles. Examples of minor variations would include correcting spelling errors or incorrect cross-references.

As the ICEMR Principles implement a fundamental component of the National Standard, the Minister must consult with state and territory Environment Ministers on all variations to the ICEMR Principles, regardless of whether the proposed variation is minor in nature or not.

The Minister may also seek the advice of the Advisory Committee in deciding whether to vary or revoke the ICEMR Principles.

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<sup>5</sup> For further information see the Explanatory Note for the Advisory Committee on the Environmental Management of Industrial Chemicals.

<sup>6</sup> This is a result of the operation of subsection 33(3) of the *Acts Interpretation Act 1901* (Cth). This subsection relevantly provides that, where an Act confers the power to make a legislative instrument, this power is construed as including a power (exercisable in a like manner and subject to like conditions) to repeal, rescind, revoke, amend, or vary the legislative instrument.