



Australian Government

EXPOSURE DRAFT

Industrial Chemicals Environmental Management (Register) Bill 2020

Explanatory Note

Information sharing and confidentiality

Part 4 of the Industrial Chemicals Environmental Management (Register) Bill 2020 (the ICEMR Bill) specifies how information given to the Minister for the Environment (the Minister), and to the Department of the Environment and Energy (the Department) is to be used and disclosed, as well as other information sharing matters.

The ICEMR Bill will build on existing reforms to the National Industrial Chemicals Notification and Assessment Scheme (NICNAS). The *Industrial Chemicals Act 2019* (the IC Act) will commence on 1 July 2020. Under the IC Act, assessments of industrial chemicals will be completed under the Australian Industrial Chemicals Introduction Scheme (AICIS), which will replace NICNAS.

The ICEMR Bill will allow the Minister to make scheduling decisions in relation to industrial chemicals. Scheduling decisions will be informed by relevant AICIS risk assessments, as well as other information provided to AICIS as part of the assessment and consultation process.

Ensuring that information is shared appropriately between the AICIS and ICEMR schemes will avoid duplication of requests to industry for information, and will streamline the scheduling of chemicals.

Receiving and sharing information

Information used to inform scheduling decisions under the ICEMR Bill will be received from a range of sources:

- Under the IC Act: information may be provided to the Department by a person in the course of performing functions, or exercising powers, under the IC Act. For example, information provided to the Department by the Executive Director of AICIS as part of the IC Act consultation process (clause 62 and section 34 of the IC Act).
- Under the ICEMR Bill: information may be received from a person or State and Territory Environment Ministers in response to a request or invitation for information or submissions relevant to a scheduling decision¹ (clauses 15 – 19). Certain entrusted people under the IC Act (such as the Executive Director or APS employees of the Department of Health) may also disclose information to the Minister for the purposes of the Minister's functions under the ICEMR Bill (clause 61).
- Other information may be provided to the Minister or the Department outside of the formal mechanisms under the IC Act or ICEMR Bill.

¹ For further information see the Explanatory Note for Scheduling Decisions

This information may include confidential information or information that is protected information under the IC Act, which can only be disclosed by certain people for specific permitted purposes (see below).

Information given to the Minister or Department that is not protected, may be used or disclosed by the Department to assist in the performance of the Minister's functions, or exercising of powers, under the ICEMR Bill and instruments (clause 62).

Protecting information

Maintaining protections for information received under the IC Act

Information that is protected under the IC Act will have those protections maintained under the ICEMR Bill. For example, where the proper name and end use of a chemical has been determined to be protected information under the IC Act, the masked name and generalised end use will be used in a scheduling decision made under the ICEMR Bill. This is consistent with listings in the Australian Inventory of Industrial Chemicals under the IC Act.

If protected information under the IC Act ceases to be protected, it will automatically cease to be protected information under the ICEMR Bill.

Process for protecting information received under the ICEMR Bill

A person who gives information to the Minister (whether under the ICEMR Bill or otherwise) in relation to a scheduling decision may request that the information not be publicly disclosed (clause 40). If such a request is made, the information will be considered to be confidential information under the ICEMR Bill and treated as protected information for the purposes of the ICEMR Bill.

Using and disclosing protected information

An entrusted person (which is defined in clause 7 and includes the Minister or an APS employee of the Department) must not use or disclose protected information unless the use or disclosure is permitted by the ICEMR Bill (see *Permitted uses and disclosures* below), the rules or another law of the Commonwealth. Criminal or civil offences may apply if an entrusted person uses or discloses information contrary to the permitted use or disclosures (clause 47).

Permitted uses and disclosures

There are four broad categories of permitted uses and disclosures of protected information (as described below).

1. Use or disclosure in the course of exercising powers, or performing functions or duties (clause 48)

An entrusted person may use or disclose protected information when exercising powers, or performing functions or duties under the ICEMR Bill and instruments.

2. Disclosure to certain other entities (clauses 49 and 50)

The Minister may disclose protected information to a Commonwealth entity if satisfied that the information will help the entity to exercise its powers, or perform its functions or duties. Similarly, the Minister may also disclose protected information to a State Environment Minister or State government body if it is necessary for the Minister's functions or powers under the ICEMR Bill and instruments.

Criminal or civil offences may apply if an official of a Commonwealth entity uses or discloses information other than for the purpose for which it was disclosed. State Environment Ministers or State government bodies may only further disclose protected information in accordance with an agreement made between the Commonwealth and the State.

3. Use or disclosure in certain circumstances or for certain purposes (clauses 51 – 58)

The Minister and/or entrusted persons are able to use and/or disclose protected information in certain circumstances or for certain purposes, including:

- with consent
- where the information has been lawfully made publicly available
- to the person to whom the information relates or to the person from whom the information was obtained
- to a court, tribunal or authority,
- for the purposes of law enforcement, and
- to reduce serious risk to public health or the environment.

Depending on the purpose, a permitted disclosure may be to specific persons or to the general public. Information may be used or disclosed under one or more permitted uses or disclosures.

4. Public disclosure of confidential information (clauses 40 – 46 and clause 59)

It may become necessary to publicly disclose protected information where it is in the public interest to do so in circumstances where the permitted disclosures (clauses 51 – 58) do not apply. Clause 59 allows this type of disclosure provided the Minister has given a proposed disclosure notice in relation to the information, and the process outlined in Part 4 of Division 2 has been completed.

At the time a person provides information to the Minister, whether it be as part of a public consultation process or otherwise, that person may request the information not be publicly disclosed (clause 40).

In considering such a request, the Minister must weigh any potential commercial prejudice to the person who made the request against the public interest in publicly disclosing the information. The Minister must not publicly disclose the information until any reconsideration or review rights have been exhausted or have expired.