



Australian Government

EXPOSURE DRAFT

Industrial Chemicals Environmental Management (Register) Bill 2020

Explanatory Note

Overview of the Legislative Framework for the National Standard for the Environmental Risk Management of Industrial Chemicals

Background

Industrial chemicals are used widely in a range of products including plastics and rubbers, paints, fuels, manufacturing, mining, household products, toiletries and cosmetics.

The majority of chemicals in everyday use are of low concern to the environment and human health. However, some chemicals may cause environmental damage and human health impacts if they are not managed appropriately.

Industrial chemicals are currently assessed for health and environmental risks through the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), under the *Industrial Chemicals (Notification and Assessment) Act 1989*. Under NICNAS, recommendations are made to prevent harm to the environment and human health from environmental exposure to industrial chemicals. There currently isn't a mechanism to consistently implement these recommendations. This leads to uncertainty, gaps, duplication, increased costs for business and inadequate environmental protection.

The key gap in the regulatory framework for environmental risk management of industrial chemicals is the lack of a mechanism to consistently implement the recommendations for the management of risks to the environment made by NICNAS.

In 2008, the Productivity Commission released its *Research Report on Chemicals and Plastics Regulation*. This report highlighted that the management of environmental risks from industrial chemicals across jurisdictions was fragmented and inefficient, and less effective than other chemical risk management regimes. The Productivity Commission also recognised that existing national regulatory arrangements for industrial chemicals were not sufficient to provide adequate environmental protection.

The report recommended the establishment of a standards-setting body to develop nationally consistent risk management decisions for industrial chemicals (Recommendation 9.2).

Legislative framework for the National Standard

In July 2015, the Commonwealth and states and territories agreed to establish a National Standard for the environmental risk management of industrial chemicals (the National

Standard)¹. The National Standard will provide for a consistent, nation-wide approach to managing the risks that industrial chemicals may pose to the environment. It was agreed that the National Standard will be established under Commonwealth legislation and implemented by each state and territory.

The National Standard was developed in consultation with states, territories and industry stakeholders, and agreed in principle by Environment Ministers in December 2017.

Document	Function
Industrial Chemicals Environmental Management (Register) Bill 2020 (the ICEMR Bill)	This Bill will provide the legislative basis for the functions required to implement the National Standard.
Industrial Chemicals Environmental Management (Register) Principles 2020 (the ICEMR Principles)	This legislative instrument will set out the risk criteria used to inform scheduling decisions.
Industrial Chemicals Environmental Management (Register) Instrument 2020 (the ICEM Register)	This legislative instrument will record the scheduling decisions made.

These documents, supported by policies and guidance material, collectively form the legislative framework to establish the National Standard.

The legislative framework will allow the Commonwealth Environment Minister (the Minister) to make principles that set out the risk characteristics to categorise industrial chemicals (or particular uses) according to their level of concern to the environment. These principles will inform the making of a scheduling decision for a chemical and assigning risk management measures to the chemical or its use. All scheduling decisions will be recorded in the ICEM Register, to be adopted and implemented by jurisdictions. This process will be informed through consultation with the public, state and territory Environment Ministers and advice from a technical advisory committee to be established under the ICEMR Bill (see the attached flowchart for the overarching scheduling decision process).

The ICEMR Bill will build on the existing reforms to NICNAS. The *Industrial Chemicals Act 2019* (the IC Act) establishes the legislative framework for a new risk-based scheme for the regulation of industrial chemicals in Australia, to be known as the Australian Industrial Chemicals Introduction Scheme (AICIS). The ICEMR Bill has been designed to work in conjunction with the mechanisms under the IC Act, and to avoid duplication.

The legislative framework only applies to industrial chemicals. It does not apply to chemicals used in food, therapeutic goods, or agricultural or veterinary products. These chemicals will continue to be managed under other existing legislative frameworks.

The ICEMR Principles

¹ Available at the Australian Government Department of the Environment and Energy's webpage: <https://www.environment.gov.au/protection/chemicals-management>.

The ICEMR Bill will allow the Minister to make the ICEMR Principles. The ICEMR Principles set out the criteria for assigning an industrial chemical to a schedule in the ICEM Register (referred to as the risk characteristics of industrial chemicals), as described at Table B-1 in Appendix B to the National Standard, which were informed by extensive consultation with the public and industry stakeholders.

The ICEMR Principles will be a legislative instrument for the purposes of the *Legislation Act 2003*. Once the ICEMR Principles are made, they will be publicly available on the Federal Register of Legislation (www.legislation.gov.au). For further information on the ICEMR Principles, see the Explanatory Note for the Industrial Chemicals Environmental Management (Register) Principles.

Scheduling decisions

The ICEMR Bill will allow the Minister to make scheduling decisions in relation to industrial chemicals. A scheduling decision can be used to assign an industrial chemical to a schedule of the ICEM Register; and assign one or more risk management measures for the chemical (or a particular use of that chemical).

Risk management measures are used to set outcomes based requirements for the use or disposal of the chemical. A risk management measure can require particular actions or impose an obligation, may prohibit or restrict particular conduct or things, and may apply for a specified period of time. For example, a risk management measure may include a phase-in period to allow for lower risk substitutes to become available.

For each schedule of the ICEM Register, there will be a corresponding pre-defined set of risk management measures that are appropriate for managing the risks posed by chemicals listed in that schedule. This allows chemical users to be aware of the types of measures they can expect to be applied to chemicals in each schedule. Some or all of these risk management measures may be assigned to an industrial chemical or a particular use of that chemical. In addition, the Minister may determine tailored risk management measures on a case-by-case basis to manage specific risks.

The stringency of risk management measures increases across the schedules. For example, a risk management measure for an industrial chemical in a lower risk category may reflect a general responsibility to protect the environment, whereas a higher risk category will have more specific and stringent risk management measures. This encourages the use of industrial chemicals from lower risk categories.

For further information on scheduling decisions, see the Explanatory Note for Scheduling Decisions. For further information on the standard set of risk management measures applicable to each schedule of the ICEM Register, see the Information Paper – Risk Management Measures.

The ICEM Register

The ICEMR Bill allows the Minister to establish the ICEM Register. The Minister will be required to ensure all scheduling decisions are recorded in the ICEM Register. The ICEM

Register is a legislative instrument for the purposes of the *Legislation Act 2003* and will be publicly available on the Federal Register of Legislation (www.legislation.gov.au).

The ICEM Register does not create prohibitions or restrictions that are enforceable, until such time as it is adopted and implemented by States, Territories, and the Commonwealth, within their jurisdictions.

For further information on the ICEM Register, see the Explanatory Note for the Industrial Chemicals Environmental Management (Register) Instrument.

Advisory Committee

The ICEMR Bill establishes the Advisory Committee on the Environmental Management of Industrial Chemicals. The functions of the Advisory Committee include advising the Minister on matters related to making, varying and revoking scheduling decisions, the ICEM Register and the ICEMR Principles.

For further information on the Advisory Committee, see the Explanatory Note for the Advisory Committee on the Environmental Management of Industrial Chemicals.

Information sharing and confidentiality

The ICEMR Bill will provide mechanisms for receiving and sharing information (such as chemical assessment information from AICIS) that provide robust protections for confidential information. This will ensure scheduling decisions are based on the best available information.

For further information regarding information sharing, see the Explanatory Note for Information sharing and confidentiality.

Cost recovery

It is intended that the scheduling decision process under the ICEMR Bill will be cost recovered in accordance with the Australian Government Charging Framework². Cost recovery arrangements will be finalised following consultation, including through the development of a Cost Recovery Implementation Statement.

Implementation

Following the establishment of this legislative framework, the Commonwealth and states and territories will be responsible for implementing scheduling decisions, recorded in the ICEM Register, within their jurisdictions. This will drive national consistency in the management of industrial chemicals, reducing costs to industry and providing better protection for the environment.

² Available at the Australian Government Department of Finance webpage: <https://www.finance.gov.au/resource-management/charging-framework/>

Making a scheduling decision under the Industrial Chemicals Environmental Management (Register) Bill

