



Australian Government

EXPOSURE DRAFT

Industrial Chemicals Environmental Management (Register) Bill 2020

Explanatory Note

Industrial Chemicals Environmental Management (Register) Instrument

Division 3 of Part 2 of the Industrial Chemicals Environmental Management (Register) Bill 2020 (the ICEMR Bill) enables the Minister to establish a register of scheduling decisions for industrial chemicals.

The draft Industrial Chemicals Environmental Management (Register) Instrument (the ICEM Register) has been prepared by the Department of the Environment and Energy in order to inform consultation on the legislative framework to establish the National Standard for the environmental risk management of industrial chemicals¹. The examples within the draft ICEM Register are for illustrative purposes only and do not pre-empt a scheduling decision by the Minister for the Environment under the ICEMR Bill, once enacted.

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

Purpose of the ICEM Register

All scheduling decisions² made under the ICEMR Bill must be recorded in the ICEM Register. It is intended that the Commonwealth and states and territories will then adopt and implement the ICEM Register in their respective jurisdictions.

Adoption of the ICEM Register by all jurisdictions will deliver greater certainty and consistency in regulation for industrial chemical users in Australia.

Establishing the ICEM Register (clause 20 of the ICEMR Bill)

The ICEMR Bill provides for the Minister to establish the ICEM Register. Once the Minister makes a scheduling decision for an industrial chemical, the Minister must ensure the decision is recorded in the ICEM Register.

The ICEM Register is 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) and tabled in both Houses of the Parliament of the Commonwealth of Australia. As the ICEM Register will give effect to an intergovernmental scheme, it will not be subject to the disallowance or sunset provisions of the *Legislation Act 2003*.

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

² For further information see the Explanatory Note for Scheduling Decisions.

Information included on the ICEM Register

The ICEM Register will be divided into seven Schedules (Table 1) that reflect the criteria for the risk characteristics for industrial chemicals as set out in the Industrial Chemicals Environmental Management (Register) Principles³.

Table 1: Schedules to the ICEM Register

Schedule	Name
Schedule 1	Non-hazardous, or low hazard, relevant industrial chemicals
Schedule 2	Hazardous, low risk relevant industrial chemicals
Schedule 3	Hazardous, moderate risk relevant industrial chemicals
Schedule 4	Hazardous, higher risk relevant industrial chemicals
Schedule 5	Relevant industrial chemicals with potentially significantly and long lasting impacts on the environment
Schedule 6	Severely restricted relevant industrial chemicals
Schedule 7	Prohibited relevant industrial chemicals

The ICEM Register will maintain a record of scheduling decisions such as decisions to list a chemical or its industrial use in a Schedule or Schedules, as well as any prohibitions or restrictions, and applicable risk management measures⁴.

The ICEM Register may also include guidance on how it is to be read and interpreted, and explanatory information relating to a scheduling decision. This may include additional information about a particular industrial chemical or its use to aid in searching the ICEM Register; relevant guidelines such as an existing management plan; or additional information which may assist in the interpretation and implementation of the risk management measures specified for an industrial chemical.

The ICEM Register can apply, adopt or incorporate a document as in force or existing from time to time. This ensures that scheduling decisions within the ICEM Register can, for example, refer to and adopt standards for chemical management rather than having to incorporate the full text of these standards within the ICEM Register itself.

Varying or revoking the ICEM Register

Under the ICEMR Bill, the power to establish the ICEM Register also includes the power to vary or revoke the Register⁵.

³ For further information see the Explanatory Note for the Industrial Chemicals Environmental Management (Register) Principles.

⁴ For further information see the Information Paper – Risk Management Measures.

⁵ This is the 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.

Recording varied and revoked scheduling decisions on the ICEM Register

In varying a scheduling decision, the ICEMR Bill requires the Minister to ensure the ICEM Register is updated accordingly. Similarly, if a scheduling decision for an industrial chemical is revoked, the decision must be removed from the ICEM Register.

Implementation of the ICEM Register

The ICEM Register on its own does not create any prohibitions, restrictions or obligations that are enforceable in judicial or other proceedings. Rather, when another Commonwealth law, or a law of a state or territory, applies or adopts the ICEM Register (with or without modification) within its legislative framework, that law may provide for the implementation and enforcement of the scheduling decisions recorded in the ICEM Register.