

# EXPOSURE DRAFT

2019-2020

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

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

**No.     , 2020**

*(Environment)*

**A Bill for an Act relating to the environmental  
management of industrial chemicals, and for other  
purposes**

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# EXPOSURE DRAFT

1 **A Bill for an Act relating to the environmental**  
2 **management of industrial chemicals, and for other**  
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**  
6

7 **1 Short title**

8 This Act is the *Industrial Chemicals Environmental Management*  
9 *(Register) Act 2020*.

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## Part 1 Preliminary

### Section 2

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#### 1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.

6

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#### **Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

- 7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

- 10 (2) Any information in column 3 of the table is not part of this Act.  
11 Information may be inserted in this column, or information in it  
12 may be edited, in any published version of this Act.

#### 13 **3 Objects of this Act**

14 The objects of this Act are as follows:

- 15 (a) to give effect to an intergovernmental scheme involving the  
16 Commonwealth and the States that relates to the  
17 establishment of nationally consistent standards to minimise  
18 risks to the environment from industrial chemicals;
- 19 (b) to provide for the Government of the Commonwealth, as the  
20 national Government of Australia, to establish a register of  
21 scheduling decisions for relevant industrial chemicals;
- 22 (c) to provide for the Register to operate as a national scheme in  
23 that another law of the Commonwealth or a law of a State:



- 1 (i) may apply or adopt the Register (with or without  
2 modification); and  
3 (ii) may make provision for, or in relation to, its  
4 implementation and enforcement, as so applied or  
5 adopted;  
6 (d) to reflect, through scheduling decisions for relevant industrial  
7 chemicals that are included in the Register, the views of the  
8 Commonwealth on the controls, including the risk  
9 management measures, that should be applied to those  
10 chemicals;  
11 (e) to regulate the conduct of the Commonwealth, and persons  
12 employed or engaged by the Commonwealth, in connection  
13 with the Register;  
14 (f) to contribute to meeting Australia's international obligations  
15 in relation to industrial chemicals.

#### 16 **4 Simplified outline of this Act**

17 This Act provides for the Minister to make one or more scheduling  
18 decisions for a relevant industrial chemical and to vary or revoke  
19 such a decision. Before making, varying or revoking such a  
20 decision, the Minister must consult the public, may seek  
21 information from a person and may consult with the State  
22 Environment Ministers.

23 In making, varying or revoking a scheduling decision for a relevant  
24 industrial chemical, the Minister must, among other things, comply  
25 with the decision-making principles. The decision-making  
26 principles are made by the Minister and the Minister must consult  
27 the public and State Environment Ministers before making, varying  
28 or revoking them.

29 The Minister must ensure that a scheduling decision for a relevant  
30 industrial chemical, as made or as varied, is recorded in the  
31 Register. If such a decision is revoked, the Minister must ensure it  
32 is removed from the Register.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

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The Register is made by the Minister but it does not create prohibitions, restrictions or obligations that are enforceable in judicial or other proceedings.

Another law of the Commonwealth, or a law of a State, may apply or adopt the Register (with or without modification) and may make provision for, or in relation to, the implementation and enforcement of the Register, as so applied or adopted.

There is to be an Advisory Committee whose members will be appointed by the Minister. The Committee will have functions that include advising the Minister about certain matters.

This Act also includes provisions dealing with confidential information, the use and disclosure of protected information and other information sharing matters.

### 14 **5 Crown to be bound**

15 This Act binds the Crown in each of its capacities.

### 16 **6 Extension to external Territories**

17 This Act extends to the external Territories.

### 18 **7 Definitions**

19 In this Act:

20 *Advisory Committee* means the Advisory Committee on the  
21 Environmental Management of Industrial Chemicals established  
22 under section 25.

23 *Advisory Committee member* means a member of the Advisory  
24 Committee, and includes the Chair.

25 *assessment certificate* means an assessment certificate issued  
26 under section 37 of the Industrial Chemicals Act.

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1

**Chair** means the Chair of the Advisory Committee.

2

**civil penalty provision** has the same meaning as in the Regulatory Powers Act.

3

4

**Commonwealth entity** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

5

6

**Commonwealth risk assessment** means:

7

(a) a report prepared under section 31, 57, 68 or 68A of the repealed *Industrial Chemicals (Notification and Assessment) Act 1989*; or

8

9

10

(b) an assessment statement (within the meaning of the Industrial Chemicals Act); or

11

12

(c) an evaluation statement (within the meaning of the Industrial Chemicals Act).

13

14

**confidential information** means information in relation to which a request under subsection 40(1) has been given to the Minister.

15

16

**decision-making principles** means the instrument made under subsection 21(1).

17

18

**enforcement body**: see subsection 56(2).

19

**entrusted IC person** means an entrusted person within the meaning of the Industrial Chemicals Act.

20

21

**entrusted person** means:

22

(a) the Minister; or

23

(b) the Secretary of the Department; or

24

(c) an APS employee in the Department; or

25

(d) an Advisory Committee member; or

26

(e) a consultant engaged under section 66; or

27

(f) a person engaged or employed by the Department; or

28

(g) a person employed, under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of the

29

Minister.

30

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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- 1                    ***environment*** includes:
- 2                    (a) ecosystems and their constituent parts, including people and
- 3                    communities; and
- 4                    (b) natural and physical resources; and
- 5                    (c) the qualities and characteristics of locations, places and areas;
- 6                    but does not include the social, economic or cultural aspects of the
- 7                    expression ***environment***.
- 8                    ***Executive Director*** has the same meaning as in the Industrial
- 9                    Chemicals Act.
- 10                   ***foreign government body*** means:
- 11                   (a) a department of the government of a foreign country or a part
- 12                   of a foreign country; or
- 13                   (b) an agency or authority of a foreign country or a part of a
- 14                   foreign country.
- 15                   ***industrial chemical*** has the same meaning as in the Industrial
- 16                   Chemicals Act.
- 17                   ***Industrial Chemicals Act*** means the *Industrial Chemicals Act*
- 18                   2019.
- 19                   ***industrial use*** has the same meaning as in the Industrial Chemicals
- 20                   Act.
- 21                   ***internal reviewer*** means:
- 22                   (a) the Minister; or
- 23                   (b) a delegate of the Minister referred to in paragraph 45(3)(b).
- 24                   ***international agreement*** means an agreement:
- 25                   (a) whose parties are Australia and one or more foreign
- 26                   countries; and
- 27                   (b) that is in force for Australia.
- 28                   ***nominated person*** for confidential information means the person
- 29                   nominated under paragraph 40(2)(c) in a request given under
- 30                   subsection 40(1) in relation to the information.

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1                    **official** has the same meaning as in the *Public Governance,*  
2                    *Performance and Accountability Act 2013.*

3                    **paid work** means work for financial gain or reward (whether as an  
4                    employee, a self-employed person or otherwise).

5                    **protected IC information** means protected information within the  
6                    meaning of the Industrial Chemicals Act.

7                    **protected information** means:

- 8                    (a) confidential information; or  
9                    (b) protected IC information.

10                  **public international organisation** means:

- 11                  (a) an organisation:  
12                      (i) of which 2 or more countries, or the governments of 2  
13                      or more countries, are members; or  
14                      (ii) that is constituted by persons representing 2 or more  
15                      countries, or representing the governments of 2 or more  
16                      countries; or  
17                  (b) an organisation established by, or a group of organisations  
18                  constituted by:  
19                      (i) organisations of which 2 or more countries, or the  
20                      governments of 2 or more countries, are members; or  
21                      (ii) organisations that are constituted by the representatives  
22                      of 2 or more countries, or the governments of 2 or more  
23                      countries; or  
24                  (c) an organisation that is:  
25                      (i) an organ of, or office within, an organisation described  
26                      in paragraph (a) or (b); or  
27                      (ii) a commission, council or other body established by an  
28                      organisation so described or such an organ; or  
29                      (iii) a committee, or subcommittee of a committee, of an  
30                      organisation so described, or of such an organ, council  
31                      or body.

32                  **reconsideration decision** means a decision made under subsection  
33                  45(4).

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 8

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- 1            **Register** means the instrument made under subsection 20(1).
- 2            **Regulatory Powers Act** means the *Regulatory Powers (Standard*  
3            *Provisions) Act 2014*.
- 4            **relevant industrial chemical** means:  
5            (a) a particular industrial chemical; or  
6            (b) a particular class of industrial chemicals.
- 7            **rules** means the rules made under section 68.
- 8            **scheduling decision** for a relevant industrial chemical: see  
9            subsection 10(3).
- 10           **State** includes the Northern Territory and the Australian Capital  
11           Territory.
- 12           **State Environment Minister** means a Minister of a State who is  
13           responsible for matters relating to the environment.
- 14           **State government body** means:  
15           (a) a department of the government of a State; or  
16           (b) an agency or authority of a State.
- 17           **vacancy**, in relation to the office of an Advisory Committee  
18           member, has a meaning affected by section 8.

#### 8 Vacancy in the office of an Advisory Committee member

- 20           For the purposes of a reference in:  
21           (a) this Act to a **vacancy** in the office of an Advisory Committee  
22           member; or  
23           (b) the *Acts Interpretation Act 1901* to a **vacancy** in the  
24           membership of a body;  
25           there are taken to be 8 offices of member of the Advisory  
26           Committee in addition to the Chair.

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Register of scheduling decisions for industrial chemicals **Part 2**

Introduction **Division 1**

Section 9

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1 **Part 2—Register of scheduling decisions for**  
2 **industrial chemicals**

3 **Division 1—Introduction**

4 **9 Simplified outline of this Part**

5 This Part provides for the Minister to make one or more scheduling  
6 decisions for a relevant industrial chemical and to vary or revoke  
7 such a decision. Before making, varying or revoking such a  
8 decision, the Minister must consult the public, may seek  
9 information from a person and may consult with the State  
10 Environment Ministers.

11 In making, varying or revoking a scheduling decision for a relevant  
12 industrial chemical, the Minister must, among other things, comply  
13 with the decision-making principles. The decision-making  
14 principles are made by the Minister and the Minister must consult  
15 the public and State Environment Ministers before making, varying  
16 or revoking them.

17 The Minister must ensure that a scheduling decision for a relevant  
18 industrial chemical, as made or as varied, is recorded in the  
19 Register. If such a decision is revoked, the Minister must ensure it  
20 is removed from the Register.

21 The Register is made by the Minister but it does not create  
22 prohibitions, restrictions or obligations that are enforceable in  
23 judicial or other proceedings.

24 Another law of the Commonwealth, or a law of a State, may apply  
25 or adopt the Register (with or without modification) and may make  
26 provision for, or in relation to, the implementation and  
27 enforcement of the Register, as so applied or adopted.

# EXPOSURE DRAFT

**Part 2** Register of scheduling decisions for industrial chemicals

**Division 2** Scheduling decisions for relevant industrial chemicals

Section 10

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1       **Division 2—Scheduling decisions for relevant industrial**  
2                   **chemicals**

3       **10 Minister may make scheduling decision for relevant industrial**  
4                   **chemical**

- 5                   (1) The Minister may make one or more scheduling decisions for a  
6                   relevant industrial chemical.
- 7                   (2) If the Minister makes a scheduling decision for a relevant industrial  
8                   chemical, the Minister must ensure that the decision for the  
9                   chemical is recorded in the Register.
- 10                  (3) A *scheduling decision* for a relevant industrial chemical is any one  
11                  or more of the following decisions:  
12                    (a) a decision to list the chemical in a particular Schedule or  
13                    Schedules of the Register;  
14                    (b) a decision to specify any one or more of the following  
15                    matters in relation to the chemical as so listed:  
16                      (i) that the exportation, importation, manufacture or  
17                      industrial use of the chemical is prohibited, or restricted,  
18                      in all circumstances or in specified circumstances;  
19                      (ii) one or more industrial uses of the chemical;  
20                      (iii) one or more risk management measures for the chemical  
21                      or for any specified industrial uses of the chemical;  
22                    (c) a decision relating to the chemical that is of a kind specified  
23                    in the rules.
- 24                  (4) For the purposes of listing a relevant industrial chemical in a  
25                  Schedule of the Register, the Minister may identify the chemical:  
26                    (a) in a single way; or  
27                    (b) in 2 or more ways.

28                  Note:       The Minister may, for example, identify the relevant industrial  
29                                  chemical by specifying any or all of the following:  
30                                  (a) the Chemical Abstracts Service Registry Number for the  
31                                  chemical;



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Register of scheduling decisions for industrial chemicals **Part 2**  
Scheduling decisions for relevant industrial chemicals **Division 2**

## Section 11

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- 1 (b) the name recommended by the International Union of Pure and  
2 Applied Chemistry for the chemical;  
3 (c) the molecular formula of the chemical.
- 4 (5) The Minister may decide to list a particular industrial chemical in a  
5 Schedule of the Register even if it is included in a particular class  
6 of industrial chemicals that is listed in that Schedule or another  
7 Schedule of the Register.
- 8 (6) A risk management measure specified by the Minister may:  
9 (a) prohibit or restrict particular conduct or things in all  
10 circumstances or in specified circumstances; or  
11 (b) require particular conduct or things in all circumstances or in  
12 specified circumstances; or  
13 (c) impose an obligation in relation to particular conduct or  
14 things in all circumstances or in specified circumstances; or  
15 (d) apply from or until a particular date or for a particular period.

### 11 Variation or revocation of scheduling decision made for relevant industrial chemical

- 16 (1) If the Minister makes a scheduling decision for a relevant industrial  
17 chemical under subsection 10(1), the Minister may vary or revoke  
18 the decision for the chemical.  
19  
20
- 21 (2) If the Minister varies a scheduling decision for a relevant industrial  
22 chemical under subsection (1), the Minister must ensure that the  
23 decision for the chemical, as so varied, is recorded in the Register.
- 24 (3) If the Minister revokes a scheduling decision for a relevant  
25 industrial chemical under subsection (1), the Minister must ensure  
26 that the decision for the chemical is removed from the Register.

### 12 Compliance with decision-making principles etc.

- 27 (1) The Minister must not make a scheduling decision for a relevant  
28 industrial chemical unless the decision-making principles are in  
29 force.  
30

# EXPOSURE DRAFT

**Part 2** Register of scheduling decisions for industrial chemicals

**Division 2** Scheduling decisions for relevant industrial chemicals

## Section 13

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- 1 (2) In making, varying or revoking a scheduling decision for a relevant  
2 industrial chemical, the Minister must comply with the  
3 decision-making principles.

### 4 **13 Minister must have regard to certain matters in making etc.** 5 **scheduling decision**

- 6 (1) In making, varying or revoking a scheduling decision for a relevant  
7 industrial chemical, the Minister must have regard to the following:  
8 (a) if there is a single relevant Commonwealth risk assessment in  
9 relation to the chemical—that assessment;  
10 (b) if there are 2 or more relevant Commonwealth risk  
11 assessments in relation to the chemical—the most recent of  
12 those assessments;  
13 (c) any relevant risks that the chemical poses, or may pose, to the  
14 environment and how any such risks may be minimised;  
15 (d) any relevant advice given to the Minister by the Advisory  
16 Committee;  
17 (e) if Australia has any relevant obligations in relation to the  
18 chemical under an international agreement specified in the  
19 rules—those obligations;  
20 (f) any relevant submissions made in accordance with an  
21 invitation under subsection 15(1);  
22 (g) any relevant information given to the Minister under  
23 subsection 17(3) or 18(3);  
24 (h) any such matters as are specified in the rules.
- 25 (2) Subsection (1) does not apply to a variation of a scheduling  
26 decision for a relevant industrial chemical if the variation is of a  
27 minor nature.
- 28 (3) For the purposes of subsection (2), a variation of a scheduling  
29 decision for a relevant industrial chemical that does no more than  
30 change the way or ways in which the chemical is identified is taken  
31 to be a variation of a minor nature.

# EXPOSURE DRAFT

Register of scheduling decisions for industrial chemicals **Part 2**  
Scheduling decisions for relevant industrial chemicals **Division 2**

Section 14

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1 **14 Minister may have regard to certain matters in making etc.**  
2 **scheduling decision**

- 3 (1) In making, varying or revoking a scheduling decision for a relevant  
4 industrial chemical, the Minister may have regard to the following:  
5 (a) if there are 2 or more relevant Commonwealth risk  
6 assessments in relation to the chemical—those assessments  
7 other than the most recent of them;  
8 (b) if a State government body has undertaken a relevant risk  
9 assessment (however described) in relation to the chemical—  
10 that assessment;  
11 (c) if a foreign government body has undertaken a relevant risk  
12 assessment (however described) in relation to the chemical—  
13 that assessment;  
14 (d) if a public international organisation has undertaken a  
15 relevant risk assessment (however described) in relation to  
16 the chemical—that assessment;  
17 (e) any environmental, social or economic matter that the  
18 Minister considers relevant to the making, varying or  
19 revoking (as the case may be) of the decision for the  
20 chemical;  
21 (f) any other matters as are specified in the rules;  
22 (g) any other matters as the Minister considers relevant.
- 23 (2) In determining for the purposes of paragraph (1)(e) whether any  
24 environmental, social or economic matter is relevant to the making,  
25 varying or revoking (as the case may be) of the scheduling decision  
26 for the relevant industrial chemical, it is to be assumed that the  
27 Commonwealth and each State has made a law:  
28 (a) applying or adopting the Register; and  
29 (b) making provision for, or in relation to, the implementation  
30 and enforcement of the Register, as so applied or adopted.

# EXPOSURE DRAFT

**Part 2** Register of scheduling decisions for industrial chemicals

**Division 2** Scheduling decisions for relevant industrial chemicals

## Section 15

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1     **15 Public consultation about scheduling decision for relevant**  
2                     **industrial chemical**

- 3             (1) Before making, varying or revoking a scheduling decision for a  
4                 relevant industrial chemical, the Minister must cause to be  
5                 published on the Department's website a notice:  
6                     (a) setting out the proposed decision or the proposed variation or  
7                         revocation of the decision; and  
8                     (b) inviting persons to make submissions to the Minister about  
9                         the proposed decision, or the proposed variation or  
10                         revocation of the decision, in the manner, and within the time  
11                         limit, specified in the notice.
- 12             Note:         This subsection may not apply to the making of a scheduling decision  
13                             for a particular industrial chemical to which an assessment certificate  
14                             relates: see section 16.
- 15             (2) The time limit must not be shorter than 20 business days after the  
16                 notice is published.
- 17             (3) Subsection (1) does not apply to a variation of a scheduling  
18                 decision for a relevant industrial chemical if the variation is of a  
19                 minor nature.
- 20             (4) For the purposes of subsection (3), a variation of a scheduling  
21                 decision for a relevant industrial chemical that does no more than  
22                 change the way or ways in which the chemical is identified is taken  
23                 to be a variation of a minor nature.

24     **16 Consultation about scheduling decision for particular industrial**  
25                     **chemical to which assessment certificate relates**

- 26             (1) This section applies if:  
27                     (a) an assessment certificate is issued in relation to a particular  
28                         industrial chemical; and  
29                     (b) the Minister is considering making a scheduling decision for  
30                         the particular industrial chemical under subsection 10(1).

# EXPOSURE DRAFT

Register of scheduling decisions for industrial chemicals **Part 2**  
Scheduling decisions for relevant industrial chemicals **Division 2**

Section 17

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- 1 (2) Unless the Minister determines otherwise, section 15 does not  
2 apply in relation to the making of the scheduling decision for the  
3 particular industrial chemical.
- 4 (3) If the Minister considers it is appropriate to do so, the Minister  
5 may consult the holder (within the meaning of the Industrial  
6 Chemicals Act) of the assessment certificate about the making of  
7 the scheduling decision for the particular industrial chemical.

## 8 **17 Minister may request information relevant to the making etc. of** 9 **scheduling decision**

- 10 (1) The Minister may, by written notice given to a person, request the  
11 person to:
- 12 (a) give the Minister information that is relevant to the making,  
13 variation or revocation of a scheduling decision for a relevant  
14 industrial chemical; and
- 15 (b) do so in the manner, and within the time limit, specified in  
16 the notice.
- 17 (2) The time limit must not be shorter than 20 business days after the  
18 notice is given to the person.
- 19 (3) The person may give the Minister information in accordance with  
20 the request.

## 21 **18 Minister may invite persons to give information relevant to the** 22 **making etc. of scheduling decision**

- 23 (1) The Minister may cause to be published on the Department's  
24 website a notice inviting any persons who have:
- 25 (a) specified information; or  
26 (b) a specified type of information;
- 27 that is relevant to the making, variation or revocation of a  
28 scheduling decision for a relevant industrial chemical to give the  
29 Minister that information in the manner, and within the time limit,  
30 specified in the notice.

# EXPOSURE DRAFT

**Part 2** Register of scheduling decisions for industrial chemicals

**Division 2** Scheduling decisions for relevant industrial chemicals

## Section 19

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1                   (2) The time limit must not be shorter than 20 business days after the  
2                   notice is published.

3                   (3) A person may give the Minister information in accordance with the  
4                   invitation.

### 5                   **19 Consultation with State Environment Ministers**

6                   Before making, varying or revoking a scheduling decision for a  
7                   relevant industrial chemical, the Minister may consult the State  
8                   Environment Ministers.

# EXPOSURE DRAFT

Register of scheduling decisions for industrial chemicals **Part 2**  
Register of scheduling decisions for relevant industrial chemicals **Division 3**

Section 20

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1 **Division 3—Register of scheduling decisions for relevant**  
2 **industrial chemicals**

3 **20 Register of scheduling decisions for relevant industrial chemicals**

- 4 (1) The Minister may, by legislative instrument, establish a register of  
5 scheduling decisions for relevant industrial chemicals that are  
6 made or varied under Division 2 of this Part.

7 Note 1: For variation and revocation of the instrument, see subsection 33(3) of  
8 the *Acts Interpretation Act 1901*.

9 Note 2: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the  
10 *Legislation Act 2003* do not apply to the instrument: see  
11 subsections 44(1) and 54(1) of that Act.

- 12 (2) Without limiting subsection (1), the Register may also include the  
13 following:

- 14 (a) explanatory information relating to the Register;  
15 (b) explanatory information relating to a scheduling decision for  
16 a relevant industrial chemical;  
17 (c) any other information specified in the rules.

- 18 (3) Despite subsection 14(2) of the *Legislation Act 2003*, the Register  
19 may make provision in relation to a matter by applying, adopting  
20 or incorporating, with or without modification, a matter contained  
21 in an instrument or writing:

- 22 (a) as in force or existing at a particular time; or  
23 (b) as in force or existing from time to time.

- 24 (4) The Register does not create prohibitions, restrictions or  
25 obligations that are enforceable in judicial or other proceedings.

26 Note: Another law of the Commonwealth, or a law of a State, may apply or  
27 adopt the Register (with or without modification) and may make  
28 provision for, or in relation to, the implementation and enforcement of  
29 the Register, as so applied or adopted.

# EXPOSURE DRAFT

Part 2 Register of scheduling decisions for industrial chemicals

Division 4 Decision-making principles

Section 21

---

1 **Division 4—Decision-making principles**

2 **21 Decision-making principles**

3 (1) The Minister may, by legislative instrument, determine principles  
4 to be complied with by the Minister in making, varying or revoking  
5 scheduling decisions for relevant industrial chemicals.

6 Note 1: For variation and revocation of the instrument, see subsection 33(3) of  
7 the *Acts Interpretation Act 1901*.

8 Note 2: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the  
9 *Legislation Act 2003* do not apply to the instrument: see  
10 subsections 44(1) and 54(1) of that Act.

11 (2) Despite subsection 14(2) of the *Legislation Act 2003*, the  
12 decision-making principles may make provision in relation to a  
13 matter by applying, adopting or incorporating, with or without  
14 modification, a matter contained in an instrument or writing:

15 (a) as in force or existing at a particular time; or

16 (b) as in force or existing from time to time.

17 **22 Public consultation about decision-making principles**

18 (1) Before making, varying or revoking the decision-making  
19 principles, the Minister must:

20 (a) cause to be published on the Department's website a notice:

21 (i) setting out the proposed principles or the proposed  
22 variation or revocation of the principles; and

23 (ii) inviting persons to make submissions to the Minister  
24 about the proposed principles, or the proposed variation  
25 or revocation of the principles, in the manner, and  
26 within the time limit, specified in the notice; and

27 (b) consider any submissions that:

28 (i) are made in accordance with the invitation; and

29 (ii) are relevant to the making, variation or revocation of the  
30 principles (as the case may be).



# EXPOSURE DRAFT

Register of scheduling decisions for industrial chemicals **Part 2**  
Decision-making principles **Division 4**

## Section 23

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- 1                   (2) The time limit must not be shorter than 20 business days after the  
2                   notice is published.
- 3                   (3) Subsection (1) does not apply to a variation of the decision-making  
4                   principles if the variation is of a minor nature.

### 5                   **23 Consultation with State Environment Ministers**

6                   Before making, varying or revoking the decision-making  
7                   principles, the Minister must consult the State Environment  
8                   Ministers.

# EXPOSURE DRAFT

**Part 3** Advisory Committee on the Environmental Management of Industrial Chemicals

**Division 1** Introduction

Section 24

---

1 **Part 3—Advisory Committee on the Environmental**  
2 **Management of Industrial Chemicals**

3 **Division 1—Introduction**

4 **24 Simplified outline of this Part**

5 There is to be an Advisory Committee on the Environmental  
6 Management of Industrial Chemicals.

7 The Advisory Committee will have functions that include advising  
8 the Minister about matters that are referred to it by the Minister and  
9 that relate to the making, variation or revocation of a scheduling  
10 decision for a relevant industrial chemical, the Register or the  
11 decision-making principles.

12 The Advisory Committee consists of a Chair and at least 3, but not  
13 more than 8, other members.

14 The Minister will appoint members of the Advisory Committee.

# EXPOSURE DRAFT

1 **Division 2—Establishment and functions of the Advisory**  
2 **Committee**

3 **25 Advisory Committee on the Environmental Management of**  
4 **Industrial Chemicals**

5 The Advisory Committee on the Environmental Management of  
6 Industrial Chemicals is established by this section.

7 **26 Functions of the Advisory Committee**

8 The Advisory Committee has the following functions:

- 9 (a) to advise the Minister about matters that are referred to the  
10 Advisory Committee by the Minister and that relate to the  
11 making, variation or revocation of any of the following:  
12 (i) a scheduling decision for a relevant industrial chemical;  
13 (ii) the Register;  
14 (iii) the decision-making principles;  
15 (b) any other functions conferred on the Advisory Committee by  
16 the rules;  
17 (c) to do anything incidental to or conducive to the performance  
18 of the above functions.

# EXPOSURE DRAFT

**Part 3** Advisory Committee on the Environmental Management of Industrial Chemicals

**Division 3** Membership of the Advisory Committee

Section 27

---

1 **Division 3—Membership of the Advisory Committee**

2 **27 Membership of the Advisory Committee**

- 3 The Advisory Committee consists of the following members:
- 4 (a) a Chair;
- 5 (b) at least 3, and not more than 8, other members.

6 **28 Appointment of Advisory Committee members**

- 7 (1) Each Advisory Committee member is to be appointed by the
- 8 Minister by written instrument, on a part-time basis.

9 Note: An Advisory Committee member may be reappointed: see

10 section 33AA of the *Acts Interpretation Act 1901*.

- 11 (2) An Advisory Committee member holds office for the period
- 12 specified in the instrument of appointment. The period must not
- 13 exceed 5 years.

- 14 (3) A person is not eligible for appointment as an Advisory Committee
- 15 member unless the Minister is satisfied that the person has
- 16 substantial experience or knowledge, and significant standing, in
- 17 any of the following fields:

- 18 (a) industrial chemistry;
- 19 (b) ecotoxicology;
- 20 (c) environmental risk management;
- 21 (d) environmental health;
- 22 (e) human toxicology;
- 23 (f) applied socio-economic analysis;
- 24 (g) ecology;
- 25 (h) chemical regulation;
- 26 (i) environmental regulation;
- 27 (j) any other appropriate field of expertise.

- 28 (4) In appointing the Advisory Committee members, the Minister must
- 29 ensure that the Advisory Committee members collectively possess

# EXPOSURE DRAFT

1 an appropriate balance of experience or knowledge in the fields  
2 mentioned in subsection (3).

## 3 **29 Acting appointments**

### 4 *Chair*

- 5 (1) The Minister may appoint an Advisory Committee member (other  
6 than the Chair) to act as the Chair:
- 7 (a) during a vacancy in the office of the Chair (whether or not an  
8 appointment has previously been made to the office); or
  - 9 (b) during any period, or during all periods, when the Chair:
    - 10 (i) is absent from duty or from Australia; or
    - 11 (ii) is, for any reason, unable to perform the duties of the  
12 office.

### 13 *Other Advisory Committee member*

- 14 (2) The Minister may appoint a person to act as an Advisory  
15 Committee member (other than the Chair):
- 16 (a) during a vacancy in the office of an Advisory Committee  
17 member (other than the Chair), whether or not an  
18 appointment has previously been made to the office; or
  - 19 (b) during any period, or during all periods, when an Advisory  
20 Committee member (other than the Chair):
    - 21 (i) is absent from duty or from Australia; or
    - 22 (ii) is, for any reason, unable to perform the duties of the  
23 office.

### 24 *Eligibility*

- 25 (3) A person is not eligible for appointment under subsection (2)  
26 unless the person is eligible for appointment as an Advisory  
27 Committee member.

28 Note 1: For eligibility to be appointed as an Advisory Committee member, see  
29 subsection 28(3).

# EXPOSURE DRAFT

## Part 3 Advisory Committee on the Environmental Management of Industrial Chemicals

### Division 3 Membership of the Advisory Committee

#### Section 30

---

1 Note 2: For rules that apply to acting appointments, see sections 33AB and  
2 33A of the *Acts Interpretation Act 1901*.

#### 30 Remuneration and allowances

4 (1) An Advisory Committee member is to be paid the remuneration  
5 that is determined by the Remuneration Tribunal. If no  
6 determination of that remuneration by the Tribunal is in operation,  
7 the member is to be paid the remuneration that is specified in the  
8 rules.

9 (2) An Advisory Committee member is to be paid the allowances that  
10 are specified in the rules.

11 (3) This section has effect subject to the *Remuneration Tribunal Act*  
12 *1973*.

#### 31 Leave of absence

14 (1) The Minister may grant leave of absence to the Chair on the terms  
15 and conditions that the Minister determines.

16 (2) The Chair may grant leave of absence to another Advisory  
17 Committee member on the terms and conditions that the Chair  
18 determines.

#### 32 Disclosure of interests to the Minister

19 An Advisory Committee member must give written notice to the  
20 Minister of all interests, pecuniary or otherwise, that the member  
21 has or acquires and that conflict or could conflict with the proper  
22 performance of the member's functions.  
23

#### 33 Disclosure of interests to the Advisory Committee

24 (1) An Advisory Committee member who has an interest, pecuniary or  
25 otherwise, in a matter being considered or about to be considered  
26 by the Advisory Committee must disclose the nature of the interest  
27 to a meeting of the Committee.  
28

# EXPOSURE DRAFT

- 1 (2) The disclosure must be made as soon as possible after the relevant  
2 facts have come to the Advisory Committee member's knowledge.
- 3 (3) The disclosure must be recorded in the minutes of the meeting of  
4 the Advisory Committee.
- 5 (4) Unless the Advisory Committee otherwise determines, the  
6 Advisory Committee member:  
7 (a) must not be present during any deliberation by the  
8 Committee on the matter; and  
9 (b) must not take part in any decision of the Committee with  
10 respect to the matter.
- 11 (5) For the purposes of making a determination under subsection (4),  
12 the Advisory Committee member:  
13 (a) must not be present during any deliberation of the Advisory  
14 Committee for the purpose of making the determination; and  
15 (b) must not take part in making the determination.
- 16 (6) A determination under subsection (4) must be recorded in the  
17 minutes of the meeting of the Advisory Committee.

## 18 **34 Other paid work**

19 An Advisory Committee member must not engage in any paid  
20 work that conflicts or could conflict with the proper performance  
21 of the member's duties.

## 22 **35 Resignation**

- 23 (1) An Advisory Committee member may resign the member's  
24 appointment by giving the Minister a written resignation.
- 25 (2) The resignation takes effect on the day it is received by the  
26 Minister or, if a later day is specified in the resignation, on that  
27 later day.

# EXPOSURE DRAFT

**Part 3** Advisory Committee on the Environmental Management of Industrial Chemicals

**Division 3** Membership of the Advisory Committee

## Section 36

---

1 **36 Termination of appointment**

- 2 (1) The Minister may terminate the appointment of an Advisory  
3 Committee member:
- 4 (a) for misbehaviour; or  
5 (b) if the member is unable to perform the duties of the  
6 member's office because of physical or mental incapacity.
- 7 (2) The Minister may terminate the appointment of an Advisory  
8 Committee member if:
- 9 (a) the member:
- 10 (i) becomes bankrupt; or  
11 (ii) applies to take the benefit of any law for the relief of  
12 bankrupt or insolvent debtors; or  
13 (iii) compounds with the member's creditors; or  
14 (iv) makes an assignment of the member's remuneration for  
15 the benefit of the member's creditors; or
- 16 (b) the member is absent, except on leave of absence, for 3  
17 consecutive meetings of the Advisory Committee; or
- 18 (c) the member engages in paid work that conflicts or may  
19 conflict with the proper performance of the member's duties  
20 (see section 34); or
- 21 (d) the member fails, without reasonable excuse, to comply with  
22 section 32 or 33 (which deal with the disclosure of interests).

23 **37 Other terms and conditions**

24 An Advisory Committee member holds office on the terms and  
25 conditions (if any) in relation to matters not covered by this Act  
26 that are determined, in writing, by the Minister.



# EXPOSURE DRAFT

Advisory Committee on the Environmental Management of Industrial Chemicals **Part**

**3**

Procedures of the Advisory Committee **Division 4**

Section 38

---

1 **Division 4—Procedures of the Advisory Committee**

2 **38 Procedures of the Advisory Committee**

- 3 (1) The Advisory Committee may, subject to any direction given under  
4 subsection (2), determine its own procedures.
- 5 (2) The Minister may give the Advisory Committee written directions  
6 about the Committee's procedures.
- 7 (3) A direction given under subsection (2) is not a legislative  
8 instrument.

# EXPOSURE DRAFT

## Part 4 Confidentiality and information sharing

### Division 1 Introduction

#### Section 39

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1 **Part 4—Confidentiality and information sharing**

2 **Division 1—Introduction**

3 **39 Simplified outline of this Part**

4 This Part deals with confidential information, the use and  
5 disclosure of protected information and other information sharing  
6 matters.

7 A person who gives information to the Minister in relation to a  
8 scheduling decision for a relevant industrial chemical may request  
9 that the information not be publicly disclosed. If such a request is  
10 made, the information will be confidential information for the  
11 purposes of this Part.

12 If the Minister proposes to publicly disclose confidential  
13 information, the Minister must give the nominated person for the  
14 information notice of that proposal. The nominated person may,  
15 within the time limit specified in the notice, apply to the Minister  
16 for the information not to be publicly disclosed.

17 If the nominated person makes such an application, the Minister  
18 must decide whether or not to approve the application. The  
19 Minister may publicly disclose the information in certain  
20 circumstances, including if the Minister decides not to approve the  
21 application and any reconsideration and review rights in relation to  
22 the decision have been exhausted or have expired.

23 Both confidential information and protected IC information will be  
24 protected information for the purposes of this Part. If an entrusted  
25 person obtains protected information in the person's capacity as an  
26 entrusted person, the person must not use or disclose the  
27 information unless the use or disclosure is authorised by this Act,  
28 the rules or another law of the Commonwealth.

# EXPOSURE DRAFT

1 **Division 2—Confidential information**

2 **40 Request that information not be publicly disclosed**

3 (1) If a person gives information to the Minister (whether under this  
4 Act or otherwise) in relation to a scheduling decision for a relevant  
5 industrial chemical, the person may request that the information  
6 not be publicly disclosed.

7 (2) The request must:

8 (a) be made in writing; and

9 (b) be given to the Minister at the same time as the information  
10 is given to the Minister; and

11 (c) nominate a person to whom the Minister must give any  
12 notice under section 41 that relates to the information; and

13 (d) be accompanied by any documents or information specified  
14 in the rules.

15 **41 Notice of proposed public disclosure of confidential information**

16 (1) If the Minister proposes to publicly disclose confidential  
17 information, the Minister must give the nominated person for the  
18 information a written notice stating that:

19 (a) the Minister proposes to publicly disclose the information;  
20 and

21 (b) the nominated person may, within the time limit specified in  
22 the notice, apply under section 42 for the information not to  
23 be publicly disclosed; and

24 (c) if no such application is made within that time limit, the  
25 Minister may publicly disclose the information under section  
26 59.

27 (2) The time limit must not be shorter than 20 business days after the  
28 day the notice is given.

# EXPOSURE DRAFT

## Part 4 Confidentiality and information sharing

### Division 2 Confidential information

#### Section 42

---

1       **42 Application for confidential information not to be publicly**  
2               **disclosed**

- 3               (1) If the nominated person for confidential information is given a  
4               notice under subsection 41(1) in relation to the information, the  
5               nominated person may apply for the information not to be publicly  
6               disclosed.

7               Note:        If no such application is made within the time limit specified in the  
8               notice, the Minister may publicly disclose the confidential  
9               information: see section 59.

- 10              (2) The application must:  
11                  (a) be made in writing; and  
12                  (b) be made within the time limit specified in the notice; and  
13                  (c) be accompanied by any documents or information specified  
14                  in the rules.
- 15              (3) The application may be made by the nominated person alone or  
16              jointly with another person.

17       **43 Minister may request further information in relation to**  
18               **application**

- 19              (1) If:  
20                  (a) the nominated person for confidential information makes an  
21                  application under subsection 42(1) in relation to the  
22                  information (whether alone or jointly with another person);  
23                  and  
24                  (b) the Minister needs further information to make a decision on  
25                  the application;  
26              the Minister may, by written notice given to the nominated person,  
27              request the nominated person to give further information to the  
28              Minister within the time limit specified in the notice.
- 29              (2) The time limit must not be shorter than 20 business days after the  
30              day the notice is given.

# EXPOSURE DRAFT

1 (3) If the nominated person does not give the requested further  
2 information within the time limit specified in the notice, the  
3 application is taken to be withdrawn at the end of the time limit.

4 Note: If the application is taken to be withdrawn under this subsection, the  
5 Minister may publicly disclose the confidential information to which  
6 the application related: see section 59.

7 (4) A notice given under subsection (1) must set out the effect of  
8 subsection (3) and section 59.

## 9 **44 Decision on application for confidential information not to be** 10 **publicly disclosed**

11 (1) If an application is made under subsection 42(1) in relation to  
12 confidential information, the Minister must decide whether or not  
13 to approve the application.

14 (2) In deciding whether or not to approve the application, the Minister  
15 must have regard to:

16 (a) whether public disclosure of the confidential information  
17 could reasonably be expected to substantially prejudice the  
18 commercial interests of an applicant; and

19 (b) whether the prejudice outweighs the public interest in the  
20 public disclosure of the confidential information.

21 (3) The Minister must not approve the application to the extent that the  
22 application relates to confidential information that is:

23 (a) information for which a person could apply for protection  
24 under section 105 of the Industrial Chemicals Act; or

25 (b) physical and chemical data about a relevant industrial  
26 chemical that does not reveal the chemical's composition; or

27 (c) summaries of data relating to risks to human health or the  
28 environment from the export, import, manufacture or use of a  
29 relevant industrial chemical.

30 (4) If the Minister decides to approve the application, the Minister  
31 must, within 14 days after making the decision, give the applicant  
32 or applicants written notice of the decision.

# EXPOSURE DRAFT

## Part 4 Confidentiality and information sharing

### Division 2 Confidential information

#### Section 45

---

- 1 (5) If the Minister decides to not approve the application, the Minister  
2 must, within 14 days after making the decision, give the applicant  
3 or applicants written notice of the following:  
4 (a) the decision;  
5 (b) the reasons for the decision;  
6 (c) the effect of section 59;  
7 (d) information regarding their rights to seek reconsideration or  
8 review of the decision under sections 45 and 46.

9 Note: If the Minister decides not to approve the application, the Minister  
10 may publicly disclose the confidential information to which the  
11 application related if any such rights have been exhausted or have  
12 expired: see section 59.

#### 13 **45 Reconsideration of decision not to approve application for** 14 **confidential information not to be publicly disclosed**

##### 15 *Request for reconsideration of original decision*

- 16 (1) A person whose interests are affected by a decision (the *original*  
17 *decision*) made under subsection 44(1) to not approve an  
18 application made under subsection 42(1) may request the Minister  
19 to reconsider the original decision.
- 20 (2) The request must be made in writing and given to the Minister  
21 within:  
22 (a) 20 business days after the day on which notice of the original  
23 decision was given under subsection 44(5); or  
24 (b) such longer period as the Minister allows.

##### 25 *Reconsideration of original decision*

- 26 (3) Within 70 business days after the day the request is given, the  
27 Minister must:  
28 (a) personally reconsider the original decision; or  
29 (b) cause the original decision to be reconsidered by a delegate  
30 of the Minister who:  
31 (i) was not involved in making the decision; and

# EXPOSURE DRAFT

Confidentiality and information sharing **Part 4**

Confidential information **Division 2**

Section 46

---

1 (ii) occupies a position that is at least the same level as that  
2 occupied by the person who made the decision.

3 (4) After reconsidering the original decision, the internal reviewer  
4 must:

5 (a) confirm the decision; or

6 (b) vary the decision; or

7 (c) set the decision aside and substitute a new decision.

8 *Reconsideration decision*

9 (5) The reconsideration decision takes effect on the day it is made.

10 (6) After the internal reviewer makes the reconsideration decision, the  
11 reviewer must give the person who made the request under  
12 subsection (1) written notice of the decision and the reasons for the  
13 decision.

14 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires  
15 the person to be notified of the person's review rights.

16 (7) The reconsideration decision is taken to have been made under the  
17 provision under which the original decision was made other than  
18 for the purposes of subsection (1).

## 19 **46 Review by the Administrative Appeals Tribunal**

20 Applications may be made to the Administrative Appeals Tribunal  
21 for review of a reconsideration decision of an internal reviewer.

# EXPOSURE DRAFT

**Part 4** Confidentiality and information sharing

**Division 3** Use or disclosure of protected information

Section 47

---

1 **Division 3—Use or disclosure of protected information**

2 **47 Prohibition on use or disclosure of protected information**

- 3 (1) A person contravenes this subsection if:
- 4 (a) the person is, or has been, an entrusted person; and
- 5 (b) the person has obtained information in the person's capacity
- 6 as an entrusted person; and
- 7 (c) the information is protected information; and
- 8 (d) the person uses or discloses the information.
- 9 (2) Subsection (1) does not apply if the use or disclosure is authorised
- 10 by:
- 11 (a) this Act or the rules; or
- 12 (b) any other law of the Commonwealth.

13 Note: A defendant bears an evidential burden in relation to a matter in

14 subsection (2) (see subsection 13.3(3) of the *Criminal Code* and

15 section 96 of the *Regulatory Powers Act*).

16 *Fault-based offence*

- 17 (3) A person commits an offence if the person contravenes
- 18 subsection (1). The physical elements of the offence are set out in
- 19 that subsection.

20 Penalty: 300 penalty units.

21 *Strict liability offence*

- 22 (4) A person commits an offence of strict liability if the person
- 23 contravenes subsection (1).

24 Penalty: 60 penalty units.

25 *Civil penalty provision*

- 26 (5) A person is liable to a civil penalty if the person contravenes
- 27 subsection (1).



# EXPOSURE DRAFT

Confidentiality and information sharing **Part 4**  
Use or disclosure of protected information **Division 3**

Section 48

---

1 Civil penalty: 300 penalty units.

## 2 **48 Use or disclosure of protected information by entrusted persons**

3 An entrusted person may use or disclose protected information if  
4 the use or disclosure is for the purposes of:

- 5 (a) this Act; or
- 6 (b) the Register; or
- 7 (c) the decision-making principles; or
- 8 (d) the rules.

## 9 **49 Disclosure of protected information to Commonwealth entities**

- 10 (1) The Minister may disclose protected information to a  
11 Commonwealth entity if the Minister is satisfied that the  
12 information will assist the entity to perform its functions or  
13 exercise its powers.
- 14 (2) A person contravenes this subsection if:
  - 15 (a) the person is, or has been, an official of a Commonwealth  
16 entity; and
  - 17 (b) the person has obtained information in the person's capacity  
18 as an official of the entity; and
  - 19 (c) the information is protected information that was disclosed to  
20 the entity under subsection (1); and
  - 21 (d) the person uses or discloses the information other than for the  
22 purpose for which it was disclosed to the entity.

### 23 *Fault-based offence*

- 24 (3) A person commits an offence if the person contravenes  
25 subsection (2). The physical elements of the offence are set out in  
26 that subsection.

27 Penalty: 300 penalty units.

# EXPOSURE DRAFT

## Part 4 Confidentiality and information sharing

### Division 3 Use or disclosure of protected information

#### Section 50

---

1

#### *Strict liability offence*

2

- (4) A person commits an offence of strict liability if the person contravenes subsection (2).

3

4

Penalty: 60 penalty units.

5

#### *Civil penalty provision*

6

- (5) A person is liable to a civil penalty if the person contravenes subsection (2).

7

8

Civil penalty: 300 penalty units.

9

### **50 Disclosure of protected information to State Environment**

10

#### **Minister or State government body**

11

The Minister (the *Commonwealth Minister*) may disclose protected information to a State Environment Minister or State government body if:

12

13

14

- (a) the Commonwealth Minister is satisfied that the disclosure of the information is necessary for the purposes of the Commonwealth Minister performing functions, or exercising powers, under:

15

16

17

18

(i) this Act; or

19

(ii) the decision-making principles; or

20

(iii) the rules; and

21

- (b) the State Environment Minister or State government body, as the case may be, has undertaken not to use or further disclose the information except in accordance with an agreement that is in force between the Commonwealth and the State that applies in relation to the information; and

22

23

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26

- (c) the Commonwealth Minister is satisfied that the information will be used and further disclosed only in accordance with the agreement.

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28

# EXPOSURE DRAFT

Confidentiality and information sharing **Part 4**  
Use or disclosure of protected information **Division 3**

Section 51

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1 **51 Use or disclosure of protected information with consent**

2 An entrusted person may use or disclose protected information that  
3 relates to the affairs of a person if:

- 4 (a) the person has consented to the use or disclosure; and  
5 (b) the use or disclosure is in accordance with that consent.

6 **52 Disclosure of protected information that is publicly available**

7 An entrusted person may disclose protected information if the  
8 information has already been lawfully made available to the public.

9 **53 Disclosure of protected information to person to whom protected**  
10 **information relates**

11 An entrusted person may disclose protected information to the  
12 person to whom the information relates.

13 **54 Disclosure to person from whom protected information was**  
14 **obtained**

15 An entrusted person may disclose protected information to the  
16 person from whom the information was obtained.

17 **55 Disclosure of protected information to a court, tribunal etc.**

18 An entrusted person may disclose protected information:

- 19 (a) for the purposes of proceedings before:  
20 (i) a court; or  
21 (ii) a tribunal, authority or person that has the power to  
22 require the answering of questions or the production of  
23 documents; or  
24 (b) in accordance with an order of a court or such a tribunal,  
25 authority or person.

# EXPOSURE DRAFT

**Part 4** Confidentiality and information sharing

**Division 3** Use or disclosure of protected information

Section 56

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1     **56 Disclosure of protected information for the purposes of law**  
2                     **enforcement etc.**

- 3             (1) The Minister may disclose protected information to an enforcement  
4             body if:
- 5                 (a) the Minister reasonably believes that the disclosure of the  
6                 information is necessary for:
    - 7                     (i) the enforcement of the criminal law; or
    - 8                     (ii) the enforcement of a law imposing a pecuniary penalty;
    - 9                     or
    - 10                    (iii) the protection of the public revenue; and
  - 11                (b) the functions of the body include that enforcement or  
12                protection; and
  - 13                (c) the information is disclosed for the purposes of that  
14                enforcement or protection.
- 15             (2) Each of the following is an *enforcement body*:
- 16                 (a) a department, agency or authority of the Commonwealth;
  - 17                 (b) a State government body;
  - 18                 (c) the Australian Federal Police;
  - 19                 (d) the police force or police service of a State.

20     **57 Disclosure of protected information to reduce serious risk to**  
21                     **public health**

- 22             The Minister may disclose protected information if:
- 23                 (a) the Minister reasonably believes that the disclosure is  
24                 necessary to prevent or lessen a serious risk to public health;  
25                 and
  - 26                 (b) the disclosure is for the purposes of preventing or lessening  
27                 that risk.

28     **58 Disclosure of protected information to reduce serious risk to the**  
29                     **environment**

30             The Minister may disclose protected information if:

# EXPOSURE DRAFT

Confidentiality and information sharing **Part 4**  
Use or disclosure of protected information **Division 3**

## Section 59

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- 1 (a) the Minister reasonably believes that the disclosure is  
2 necessary to prevent or lessen a serious risk to the  
3 environment; and  
4 (b) the disclosure is for the purposes of preventing or lessening  
5 that risk.

### 6 **59 Public disclosure of confidential information by the Minister**

- 7 (1) The Minister may publicly disclose protected information that is  
8 confidential information if:  
9 (a) the Minister has given a notice (the *proposed disclosure*  
10 *notice*) under subsection 41(1) in relation to the information;  
11 and  
12 (b) subsection (2) applies in relation to the information.
- 13 (2) This subsection applies in relation to confidential information if  
14 any of the following apply:  
15 (a) no application in relation to the information has been made  
16 under subsection 42(1) within the time limit specified in the  
17 proposed disclosure notice;  
18 (b) an application in relation to the information that was made  
19 under subsection 42(1) is taken to have been withdrawn  
20 under subsection 43(3);  
21 (c) both of the following apply:  
22 (i) the Minister has decided under subsection 44(1) to not  
23 approve an application in relation to the information that  
24 was made under subsection 42(1);  
25 (ii) any reconsideration and review rights under sections 45  
26 and 46 in relation to the decision have been exhausted  
27 or have expired.

# EXPOSURE DRAFT

**Part 4** Confidentiality and information sharing

**Division 4** Other information sharing matters

Section 60

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1 **Division 4—Other information sharing matters**

2 **60 Public disclosure of Advisory Committee recommendations**

3 If the Minister considers that it is appropriate to do so, the Minister  
4 may publicly disclose a recommendation made by the Advisory  
5 Committee in advising the Minister about a matter referred to in  
6 paragraph 26(a).

7 **61 Disclosure of protected IC information to the Minister**

8 An entrusted IC person may disclose protected IC information to  
9 the Minister if the person reasonably believes that the disclosure of  
10 the information will assist in the performance of the Minister's  
11 functions, or the exercise of the Minister's powers, under:

- 12 (a) this Act; or  
13 (b) the decision-making principles; or  
14 (c) the rules.

15 Note: This section authorises the disclosure of protected IC information for  
16 purposes of paragraph 115(1)(e) of the Industrial Chemicals Act.

17 **62 Use etc. of information disclosed to the Department under the**  
18 **Industrial Chemicals Act**

19 (1) If a person discloses information to the Department in the course of  
20 performing functions, or exercising powers, under the Industrial  
21 Chemicals Act, the information:

22 (a) may be used by the Department to assist in the performance  
23 of the Minister's functions, or the exercise of the Minister's  
24 powers, under:

- 25 (i) this Act; or  
26 (ii) the decision-making principles; or  
27 (iii) the rules; and

28 (b) may be disclosed to, and used by, the Minister for the  
29 purposes of performing those functions or exercising those  
30 powers.

# EXPOSURE DRAFT

Confidentiality and information sharing **Part 4**  
Other information sharing matters **Division 4**

Section 62

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- 1                   (2) If a person discloses information to the Department in the course of  
2 performing functions, or exercising powers, under the Industrial  
3 Chemicals Act, the information:  
4                   (a) may be used by the Department to assist in the performance  
5 of the Advisory Committee's functions, or the exercise of the  
6 Advisory Committee's powers, under this Act or the rules;  
7 and  
8                   (b) may be disclosed to, and used by, the Advisory Committee  
9 for the purposes of performing those functions or exercising  
10 those powers.

# EXPOSURE DRAFT

**Part 4** Confidentiality and information sharing

**Division 5** Civil penalties

Section 63

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1     **Division 5—Civil penalties**

2     **63 Civil penalty provisions**

3                     *Enforceable civil penalty provisions*

4             (1) Each civil penalty provision of this Act is enforceable under Part 4  
5             of the Regulatory Powers Act.

6             Note:       Part 4 of the Regulatory Powers Act allows a civil penalty provision to  
7                         be enforced by obtaining an order for a person to pay a pecuniary  
8                         penalty for the contravention of the provision.

9                     *Authorised applicant and relevant court*

10            (2) For the purposes of Part 4 of the Regulatory Powers Act, as it  
11            applies in relation to the civil penalty provisions of this Act:

12               (a) the Minister is an authorised applicant; and

13               (b) each of the following is a relevant court:

14                   (i) the Federal Court;

15                   (ii) the Federal Circuit Court;

16                   (iii) a court of a State or Territory that has jurisdiction in  
17                         relation to matters arising under this Act.

18                     *Extension to external Territories*

19            (3) Part 4 of the Regulatory Powers Act, as it applies in relation to the  
20            civil penalty provisions of this Act, extends to the external  
21            Territories.



1 **Part 5—Miscellaneous**  
2

3 **64 Simplified outline of this Part**

4 This Part deals with miscellaneous matters such as assistance for  
5 the Minister, delegations and rules.

6 **65 Executive Director may assist the Minister**

7 The Executive Director may assist the Minister in the performance  
8 of the Minister's functions, or the exercise of the Minister's  
9 powers, under:

- 10 (a) this Act; or  
11 (b) the decision-making principles; or  
12 (c) the rules.

13 **66 Engagement of consultants to assist the Minister**

14 The Minister may, on behalf of the Commonwealth, engage  
15 consultants to assist the Minister in the performance of the  
16 Minister's functions, or the exercise of the Minister's powers,  
17 under:

- 18 (a) this Act; or  
19 (b) the decision-making principles; or  
20 (c) the rules.

21 **67 Delegation by the Minister**

22 *Functions or powers under this Act etc.*

- 23 (1) The Minister may, in writing, delegate all or any of the Minister's  
24 functions or powers under this Act, the decision-making principles  
25 or the rules to the following:  
26 (a) the Secretary of the Department;
-

# EXPOSURE DRAFT

## Part 5 Miscellaneous

### Section 67

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- 1 (b) an SES employee, or acting SES employee, in the  
2 Department;  
3 (c) a person who:  
4 (i) holds, or is acting in, an Executive Level 1 or 2, or  
5 equivalent, position in the Department; and  
6 (ii) has appropriate skills, knowledge or expertise.
- 7 (2) Despite subsection (1), the Minister must not delegate the  
8 Minister's functions or powers under the following provisions of  
9 this Act:  
10 (a) section 21 (which deals with decision-making principles);  
11 (b) section 28 (which deals with the appointment of Advisory  
12 Committee members);  
13 (c) section 36 (which deals with the termination of appointment  
14 of Advisory Committee members);  
15 (d) section 68 (which deals with the making of rules).

#### *Functions or powers as authorised applicant*

- 16  
17 (3) The Minister may, in writing, delegate all or any of the functions or  
18 powers the Minister has as an authorised applicant for the purposes  
19 of Part 4 of the Regulatory Powers Act to the following:  
20 (a) the Secretary of the Department;  
21 (b) an SES employee, or acting SES employee, in the  
22 Department;  
23 (c) a person who:  
24 (i) holds, or is acting in, an Executive Level 1 or 2, or  
25 equivalent, position in the Department; and  
26 (ii) has appropriate skills, knowledge or expertise.

27 Note: Paragraph 63(2)(a) provides that the Minister is an authorised  
28 applicant for the purposes of Part 4 of the Regulatory Powers Act as it  
29 applies in relation to the civil penalty provisions of this Act.

#### *Directions to delegates*

- 30  
31 (4) A person exercising powers or performing functions under a  
32 delegation under subsection (1) or (3) must comply with any  
33 written directions of the Minister.
-

1 **68 Rules**

2 (1) The Minister may, by legislative instrument, make rules  
3 prescribing matters:

4 (a) required or permitted by this Act to be prescribed by the  
5 rules; or

6 (b) necessary or convenient to be prescribed for carrying out or  
7 giving effect to this Act.

8 Note: Section 42 (disallowance), and Part 4 of Chapter 3 (sunsetting), of the  
9 *Legislation Act 2003* do not apply to the instrument: see  
10 subsections 44(1) and 54(1) of that Act.

11 (2) To avoid doubt, the rules may not do the following:

12 (a) create an offence or civil penalty;

13 (b) provide powers of:

14 (i) arrest or detention; or

15 (ii) entry, search or seizure;

16 (c) impose a tax;

17 (d) set an amount to be appropriated from the Consolidated  
18 Revenue Fund under an appropriation in this Act;

19 (e) directly amend the text of this Act.

20 (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may  
21 make provision in relation to a matter by applying, adopting or  
22 incorporating, with or without modification, a matter contained in  
23 an instrument or writing:

24 (a) as in force or existing at a particular time; or

25 (b) as in force or existing from time to time.

26