



New South Wales

# Environmental Legislation Amendment (Hazardous Chemicals) Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* (**the Act**) to implement national reforms to the management and control of certain chemicals by—

- (a) applying the Commonwealth register under the *Industrial Chemicals Environmental Management (Register) Act 2021* of the Commonwealth to New South Wales (the **NSW IChEMS register**), and
- (b) enabling the Environment Protection Authority (the **EPA**) to publish chemical use notices to require information to be given to the EPA, and
- (c) creating offences relating to compliance with the NSW IChEMS register and chemical use notices, and
- (d) dealing with certain licences, applications, orders and offences in the Act as a consequence of the repeal of the *Environmentally Hazardous Chemicals Act 1985* (the **repealed Act**), and
- (e) making other consequential amendments.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** provides for the repeal of the *Environmentally Hazardous Chemicals Act 1985* and the regulation made under that Act. **Schedule 1[7] and [8]** make consequential amendments.

## Schedule 1      Amendment of Protection of the Environment Operations Act 1997 No 156

**Schedule 1[1]** provides that an object of the Act is to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the proper environmental management of chemicals throughout their whole lifecycle.

**Schedule 1[11]** inserts proposed Part 9.3E, which contains provisions for the management and control of certain chemicals and deals with certain licences, applications and orders in the Act as a consequence of the repeal of the repealed Act.

**Proposed Division 1** applies the Commonwealth register under the *Industrial Chemicals Environmental Management (Register) Act 2021* of the Commonwealth to New South Wales, referred to as the NSW Industrial Chemicals Environmental Management Standard Register, and creates certain offences relating to the following—

- (a) a user or manufacturer of an industrial chemical listed in the NSW IChEMS register (a **listed chemical**) complying with the risk management measures specified in the register for the chemical,
- (b) doing a thing in relation to a listed chemical that is prohibited for the chemical in the NSW IChEMS register,
- (c) contravening a phase-out condition of a licence, being a condition imposed on a licence in relation to a chemical listed as a Schedule 6 or Schedule 7 chemical in the NSW IChEMS register and specified in the licence as a phase-out condition.

**Schedule 1[3]** provides that the offences relating to the NSW IChEMS register attract special executive liability. **Schedule 1[9]** provides that the offences are prescribed offences in relation to which proceedings may be commenced within 3 years after the offence is allegedly committed. The offences are continuing offences with a maximum penalty for an individual of \$500,000 and \$60,000 for each day the offence continues, or otherwise, a maximum penalty of \$2,000,000 and \$120,000 for each day the offence continues.

**Proposed Division 2** enables the EPA to publish a **chemical use notice** to require persons who manufacture or use, or who intend to manufacture or use, certain chemicals to give specified information to the EPA and to pay to the EPA a fee in accordance with the regulations. It is an offence for a person to fail to comply with a chemical use notice.

**Proposed Division 3** deals with **chemical control orders** and associated licence conditions and offences under the Act as a consequence of the repeal of the repealed Act. A chemical control order may prohibit or regulate specified activities in relation to a chemical, but only if the EPA is satisfied the order is necessary to prevent or minimise an adverse effect on the environment that may result from carrying on the activities in relation to the chemical. It is an offence for a person to carry on an activity in relation to a chemical in contravention of a chemical control order. Conditions may also be imposed on environment protection licences to prohibit or regulate the activities.

**Schedule 1[4]** provides that the offences relating to compliance with chemical use notices and chemical control orders are executive liability offences. The offences are continuing offences with a maximum penalty for an individual of \$250,000 and \$60,000 for each day the offence continues, or otherwise, a maximum penalty of \$1,000,000 and \$120,000 for each day the offence continues.

**Proposed Division 4** deals with applications for assessments of technology under the Act as a consequence of the repeal of the repealed Act.

**Proposed Division 5** empowers the Land and Environment Court to order the forfeiture of chemicals, substances and containers of chemicals or substances if a person is convicted of an offence under the Act, Part 9.3E. The EPA may, for a specified period after seizing a substance or container, keep or return the seized substance or container, or give notice that the EPA will apply to the Land and Environment Court for the forfeiture of the seized substance or container. A forfeited substance or container must be disposed of in accordance with the direction of the EPA.

**Schedule 1[2]** provides that the Act, Chapter 3, extends to the exercise of a function relating to licence conditions under proposed Part 9.3E. **Schedule 1[12]** makes a consequential amendment.

**Schedule 1[5] and [6]** deal with certain functions of authorised officers in relation to environmentally hazardous chemicals in the Act as a consequence of the repeal of the repealed Act, and extend the functions to also deal with industrial chemicals. An authorised officer may stop a vehicle or vessel if the officer reasonably suspects an industrial chemical or environmentally hazardous chemical is being transported by, or is situated in a container being transported by, the vehicle or vessel. If an authorised officer suspects the substance and vehicle, vessel or container has been or is being used in connection with an offence against the Act or the regulations made under the Act, the authorised officer may seize and remove the substance and the vehicle, vessel or container and give certain directions in relation to the substance, vehicle, vessel or container.

**Schedule 1[10]** provides that a document signed by the CEO or a designated officer and certifying certain matters in relation to proposed Part 9.3E is admissible in proceedings under the Act and is evidence of the matters certified until proved otherwise.

**Schedule 1[13]** requires the EPA to record in the public register details of each chemical use notice and chemical control order published under proposed Part 9.3E.

**Schedule 1[14]** extends the exception to the offence of unauthorised disclosure of information to a disclosure made by a member of staff of the EPA or other regulatory authority to an officer or authority engaged in administering or executing a law of this State, the Commonwealth or of another State or Territory relating to the management of chemicals.

**Schedule 1[15] and [16]** declare certain activities relating to certain chemicals to be scheduled activities for the Act. **Schedule 1[17]** makes a consequential amendment.

**Schedule 1[18] and [19]** enable the regulations made under the Act to make provision about volatile organic liquids and chemicals.

**Schedule 1[20]** inserts transitional provisions to—

- (a) continue the operation of chemical control orders in force under the repealed Act, and
- (b) deal with environmentally hazardous chemical licences issued or applied for under the repealed Act, and
- (c) deal with pending applications for technology assessments under the repealed Act.

**Schedule 1[21]** amends the definition of *clean-up action* to include action to remove or store chemicals and products or articles containing chemicals and inserts a definition of *environmentally hazardous chemical*, which is a chemical the subject of a chemical control order. For the Act, *industrial chemical* has the same meaning as in the *Industrial Chemicals Act 2019* of the Commonwealth.

## **Schedule 2 Other amendments**

**Schedule 2.1–2.4 and 2.5[5]** remove references to the repealed Act from the following legislation—

- (a) the *Fair Trading Act 1987*,
- (b) the *Land and Environment Court Act 1979*,
- (c) the *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (d) the *Protection of the Environment Administration Act 1991*,
- (e) the *Protection of the Environment Operations (General) Regulation 2022*.

**Schedule 2.5[1]** requires certain additional matters to be included in a pollution incident response management plan relating to a licence authorising an environmentally hazardous activity within the meaning of the Act, Schedule 1, proposed clause 46.

**Schedule 2.5[2]** prescribes fees for making assessment of technology applications under the Act.

**Schedule 2.5[3] and [4]** prescribe fees for environment protection licences that authorise the carrying out of activities relating to environmentally hazardous chemicals.

**Schedule 2.5[6]** provides that offences relating to compliance with chemical use notices and chemical control orders are penalty notice offences.

**Schedule 2.6** substitutes a reference to the repealed Act with a reference to the Act for the definition of *environmentally hazardous chemical* in the *Water NSW Regulation 2020*.



New South Wales

# Environmental Legislation Amendment (Hazardous Chemicals) Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

## **Environmental Legislation Amendment (Hazardous Chemicals) Bill 2024**

No. \_\_\_\_\_, 2024

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### **A Bill for**

An Act to amend the *Protection of the Environment Operations Act 1997* to implement national reforms to the management of certain chemicals; and for related purposes.

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*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*

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**Tabling copy**

<b>The Legislature of New South Wales enacts—</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Environmental Legislation Amendment (Hazardous Chemicals) Act 2024</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Repeal of Environmentally Hazardous Chemicals Act 1985 No 14</b>	7
The following are repealed—	8
(a) the <i>Environmentally Hazardous Chemicals Act 1985</i> ,	9
(b) the <i>Environmentally Hazardous Chemicals Regulation 2017</i> .	10

<b>Schedule 1</b>	<b>Amendment of Protection of the Environment Operations Act 1997 No 156</b>	1
		2
<b>[1] Section 3 Objects of Act</b>		3
	Insert after section 3(d)(v)—	4
	(vi) the proper environmental management of chemicals throughout their whole lifecycle,	5 6
<b>[2] Section 69A</b>		7
	Insert after section 69—	8
<b>69A Chapter extends to licence conditions relating to chemicals</b>		9
	This chapter extends to the exercise of a function relating to licence conditions under Part 9.3E.	10 11
<b>[3] Section 169 Liability of directors etc for offences by corporation—offences attracting special executive liability</b>		12 13
	Insert after section 169(1A)(q)—	14
	(r) section 296C(1),	15
	(s) section 296E(1).	16
<b>[4] Section 169A Liability of directors etc for offences by corporation—offences attracting executive liability generally</b>		17 18
	Insert after section 169A(1)(u)—	19
	(v) section 296F(7),	20
	(w) section 296L(1).	21
<b>[5] Section 196 Powers of authorised officers to enter premises</b>		22
	Insert after section 196(1)(b)—	23
	(b1) premises at or from which the authorised officer reasonably suspects an offence against this Act or the regulations involving an industrial chemical or an environmentally hazardous chemical is being or is likely to be committed—at any time, and	24 25 26 27
<b>[6] Section 206A</b>		28
	Insert after section 206—	29
<b>206A Powers relating to vehicles suspected of transporting industrial chemicals or environmentally hazardous chemicals</b>		30 31
	(1) An authorised officer who suspects on reasonable grounds that an industrial chemical or an environmentally hazardous chemical is being transported by, or is situated in a container being transported by, a vehicle or vessel may—	32 33 34
	(a) if the vehicle or vessel is moving—direct that the vehicle or vessel be stopped, and	35 36
	(b) take, for the purpose of examination or testing, samples of a substance being transported, and	37 38
	(c) detain the vehicle or vessel for the time necessary to take the samples.	39
	(2) If the authorised officer suspects on reasonable grounds that the substance and a vehicle, vessel or container being used to transport the substance has been or	40 41



is being used in connection with an offence against this Act or the regulations, the authorised officer may do one or more of the following—	1 2
(a) seize and remove the substance and the vehicle, vessel or container,	3
(b) direct the occupier of the place where the substance is seized to keep the substance in that place,	4 5
(c) direct the owner of the substance to keep the substance in a place under the control of the occupier or owner that will, in the officer’s opinion, least endanger the environment,	6 7 8
(d) give directions for, or in relation to, the detention of the substance, vehicle, vessel or container.	9 10
(3) Sections 199A–202 extend to the exercise of functions under this section.	11
<b>[7] Section 213 Application of Chapter and extension of Chapter to other environment protection legislation</b>	12 13
Omit section 213(2)(a) and (4)(a).	14
<b>[8] Section 216 Time within which summary proceedings may be commenced</b>	15
Omit section 216(6), definition of <i>prescribed offence</i> , paragraph (c2).	16
<b>[9] Section 216(6) definition of “prescribed offence”</b>	17
Insert after paragraph (c6)—	18
(c7) an offence under section 296C(1), or	19
(c8) an offence under section 296E(1), or	20
<b>[10] Section 261 Certificate evidence of certain matters</b>	21
Insert after section 261(2)(u)—	22
(v) that, at a specified time, a chemical was or was not the subject of a chemical control order,	23 24
(w) that, at a specified time, a chemical control order was or was not subject to specified conditions,	25 26
(x) that, at a specified time, a chemical was or was not the subject of a chemical use notice,	27 28
(y) that, at a specified time, an industrial chemical was or was not listed in the NSW IChEMS register,	29 30
(z) that, at a specified time, a risk management measure was or was not specified in the NSW IChEMS register for an industrial chemical.	31 32
<b>[11] Chapter 9 Miscellaneous</b>	33
Insert after Part 9.3D—	34
<b>Part 9.3E Chemicals</b>	35
<b>Division 1 Industrial chemicals</b>	36
<b>296 Definitions</b>	37
In this division—	38
<i>Commonwealth register</i> means the Register within the meaning of the <i>Industrial Chemicals Environmental Management (Register) Act 2021</i> of the Commonwealth.	39 40 41

	<i>industrial chemical</i> has the same meaning as in the <i>Industrial Chemicals Act 2019</i> of the Commonwealth.	1
		2
	<i>manufacture</i> , an industrial chemical, has the same meaning as in the <i>Industrial Chemicals Act 2019</i> of the Commonwealth.	3
		4
	<i>use</i> , an industrial chemical, has the same meaning as in the <i>Industrial Chemicals Act 2019</i> of the Commonwealth.	5
		6
<b>296A</b>	<b>NSW Industrial Chemicals Environmental Management Standard Register</b>	7
(1)	The Commonwealth register, as in force from time to time and as modified by the regulations, applies for the purposes of this part and may be referred to as the NSW Industrial Chemicals Environmental Management Standard Register (the <i>NSW IChEMS register</i> ).	8 9 10 11
(2)	The regulations may modify the Commonwealth register for the purposes of the NSW IChEMS register, including by adding, varying or omitting matter.	12 13
	<b>Example</b> — The regulations may modify the Commonwealth register by adding a chemical for inclusion in the NSW IChEMS register that is not listed in the Commonwealth register.	14 15 16
(3)	If a later amendment to the Commonwealth register is inconsistent with the regulations, the regulations prevail to the extent of any inconsistency.	17 18
(4)	Terms used in the NSW IChEMS register that have been applied from the Commonwealth register have the same meanings as in the Commonwealth register unless the regulations provide otherwise.	19 20 21
<b>296B</b>	<b>Users and manufacturers to comply with risk management measures</b>	22
(1)	A person who manufactures or uses an industrial chemical listed in the NSW IChEMS register must comply with the risk management measures specified in the register for the chemical.	23 24 25
(2)	A failure to comply with a risk management measure referred to in subsection (1) is taken to be a pollution incident.	26 27
<b>296C</b>	<b>Person must not do things prohibited by NSW IChEMS register</b>	28
(1)	A person must not do a thing in relation to an industrial chemical listed in the NSW IChEMS register if doing the thing is prohibited for the chemical in the register.	29 30 31
	Maximum penalty—	32
(a)	for an individual—	33
(i)	\$500,000, and	34
(ii)	for each day the offence continues—\$60,000, or	35
(b)	otherwise—	36
(i)	\$2,000,000, and	37
(ii)	for each day the offence continues—\$120,000.	38
	<b>Note</b> — An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.	39 40 41
(2)	An activity authorised by an environment protection licence is taken not to be a contravention of subsection (1).	42 43
(3)	A person is not guilty of an offence against subsection (1) if the person proves the thing was done in relation to the industrial chemical in a way specified in the NSW IChEMS register as an exception to the prohibition.	44 45 46

<b>296D</b>	<b>Licence conditions</b>	1
(1)	The conditions of a licence may deal with the following in relation to an industrial chemical—	2
	(a) implementing a decision to—	3
	(i) list an industrial chemical in the NSW IChEMS register, or	4
	(ii) specify a prohibition, restriction, risk management measure or other matter for, or in relation to, an industrial chemical listed in the NSW IChEMS register,	5
	(b) engaging in or carrying on another activity involving an industrial chemical listed in the NSW IChEMS register.	6
(2)	A condition imposed under this section may require compliance with the condition within a specified period.	7
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		12
<b>296E</b>	<b>Failure to comply with phase-out conditions</b>	13
(1)	If a phase-out condition of a licence is contravened by a person, each holder of the licence is guilty of an offence.	14
	Maximum penalty—	15
	(a) for an individual—	16
	(i) \$500,000, and	17
	(ii) for each day the offence continues—\$60,000, or	18
	(b) otherwise—	19
	(i) \$2,000,000, and	20
	(ii) for each day the offence continues—\$120,000.	21
	<b>Note—</b> An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.	22
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		25
(2)	The holder of a licence is not guilty of an offence against this section if the holder establishes that—	26
	(a) the contravention of the condition was caused by another person, and	27
	(b) the other person was not associated with the holder when the condition was contravened, and	28
	(c) the holder took all reasonable steps to prevent the contravention of the condition.	29
(3)	Without limiting subsection (2)(b), a person is associated with the holder if the person is an employee, agent, licensee, contractor or subcontractor of the holder.	30
		31
		32
(4)	In this section—	33
	<b>holder</b> , of a licence, includes—	34
	(a) the former holder of the licence, and	35
	(b) another person required to comply with the condition or to whom the condition applies.	36
	<b>phase-out condition</b> means a condition—	37
	(a) imposed on a licence in relation to a Schedule 6 or 7 chemical within the meaning of Schedule 1, and	38
	(b) specified in the licence as a phase-out condition.	39
		40
		41
		42
		43
		44

<b>Division 2</b>	<b>Chemical use notices</b>	1
<b>296F</b>	<b>Chemical use notices</b>	2
(1)	The EPA may publish an order in the Gazette requiring a person to give information to the EPA in relation to a chemical (a <b>chemical use notice</b> ) if—	3 4
(a)	the chemical is listed in the NSW IChEMS register, or	5
(b)	a chemical control order is in force for the chemical, or	6
(c)	the chemical, in the EPA’s opinion, has the potential to present a risk of harm to human health or the environment.	7 8
(2)	A chemical use notice may require persons who manufacture or use, or who intend to manufacture or use, the chemical—	9 10
(a)	to give information to the EPA, and	11
(b)	to pay to the EPA a fee in accordance with the regulations.	12
(3)	A chemical use notice must specify the following—	13
(a)	the information that must be given,	14
(b)	the time within which the information must be given.	15
(4)	A chemical use notice may specify the form and way in which the information must be given.	16 17
(5)	A chemical use notice may require a person to give information about the following—	18 19
(a)	the chemical,	20
(b)	if the person manufactures the chemical—the manufacture of the chemical by the person, or the use or proposed use of the chemical,	21 22
(c)	if the person uses the chemical—the use of the chemical by the person,	23
(d)	the use or manufacture of another substance or thing, including another chemical, that together with the chemical may increase the risk posed by the chemical,	24 25 26
(e)	the person, including the contact details of the person,	27
(f)	the premises at which the chemical is manufactured or used,	28
(g)	the quantity of the chemical manufactured, used or stored at the premises,	29 30
(h)	other information prescribed by the regulations.	31
(6)	A chemical use notice may require a person to update information given under the notice at the times or in the circumstances specified in the notice.	32 33
(7)	A person must comply with a chemical use notice.	34
	Maximum penalty—	35
(a)	for an individual—	36
(i)	\$250,000, and	37
(ii)	for each day the offence continues—\$60,000, or	38
(b)	otherwise—	39
(i)	\$1,000,000, and	40
(ii)	for each day the offence continues—\$120,000.	41
	<b>Note—</b> An offence against this section committed by a corporation is an offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.	42 43 44

<b>296G</b>	<b>Use and disclosure of information</b>	1
(1)	The EPA may, for the exercise of its functions, use information collected under a chemical use notice.	2 3
(2)	The EPA may disclose information collected under a chemical use notice if—	4
(a)	the disclosure is to an agency of this or another Australian jurisdiction, and	5 6
(b)	the EPA is reasonably satisfied the disclosure is relevant to the functions of the agency in relation to industrial chemicals.	7 8
<b>296H</b>	<b>Chemical use notice fees</b>	9
(1)	The regulations may make provision about fees required to be paid to the EPA by persons who are required to give the EPA information under a chemical use notice.	10 11 12
(2)	Without limiting subsection (1), the regulations may make provision about the following—	13 14
(a)	the method for determining the amount of the fees,	15
(b)	the payment of the fees, including the period within which the fees must be paid, payment by instalments and the payment of interest on unpaid fees,	16 17 18
(c)	the recovery of the fees by the EPA,	19
(d)	the refund or waiver of the fees, in whole or in part, by the EPA,	20
(e)	the reduction of the fees in specified circumstances, including the granting of fee discounts by the EPA.	21 22
<b>Division 3</b>	<b>Chemical control orders</b>	23
<b>296I</b>	<b>Grounds for making orders</b>	24
(1)	The EPA may make an order (a <i>chemical control order</i> ) prohibiting or regulating one or more of the following activities in relation to a chemical—	25 26
(a)	manufacturing or processing the chemical,	27
(b)	keeping or storing the chemical,	28
(c)	distributing or transporting the chemical,	29
(d)	using the chemical,	30
(e)	selling or disposing of the chemical,	31
(f)	an activity relating to an activity referred to in paragraphs (a)–(e).	32
(2)	The EPA may make the order if satisfied the order is necessary to prevent or minimise an adverse effect on the environment that may result from carrying on the activity in relation to the chemical.	33 34 35
(3)	Without limiting subsection (2), an activity that results or is likely to result in the following is taken to have an adverse effect on the environment—	36 37
(a)	storing the chemical in accumulating deposits,	38
(b)	dumping or abandoning the chemical,	39
(c)	otherwise dealing with the chemical as waste.	40
<b>296J</b>	<b>Making orders</b>	41
(1)	A chemical control order is made by publishing the order in the Gazette.	42

(2)	The order must include the following—	1
(a)	the name of the chemical to which the order relates,	2
(b)	for activities prohibited by the order—details of the activities,	3
(c)	for activities regulated by the order—	4
(i)	details of the activities, and	5
(ii)	details of how the activities are regulated,	6
(d)	the day on which the order commences,	7
(e)	the grounds for making the order.	8
(3)	If the chemical to which the order relates is mixed with other chemicals or substances, the order may apply to the other chemicals or substances in the same way as it applies to the chemical.	9 10 11
(4)	An order must not be made in relation to—	12
(a)	a chemical prescribed by the regulations, or	13
(b)	a radioactive substance within the meaning of the <i>Protection from Harmful Radiation Act 1990</i> .	14 15
<b>296K</b>	<b>Date orders come into force</b>	16
	A chemical control order comes into force—	17
(a)	if the order is specified to be an emergency chemical control order—	18
(i)	on the day the order is made, or	19
(ii)	if a later date is specified in the order—on the later date, or	20
(b)	otherwise—	21
(i)	on the date specified in the order, or	22
(ii)	if the date specified is less than 21 days after the order is made—on the day that is 21 days after the order is made.	23 24
<b>296L</b>	<b>Person must comply with orders</b>	25
(1)	A person must not carry on an activity in relation to a chemical in contravention of a chemical control order.	26 27
	Maximum penalty—	28
(a)	for an individual—	29
(i)	\$250,000, and	30
(ii)	for each day the offence continues—\$60,000, or	31
(b)	otherwise—	32
(i)	\$1,000,000, and	33
(ii)	for each day the offence continues—\$120,000.	34
	<b>Note—</b> An offence against this section committed by a corporation is an offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.	35 36 37
(2)	A licence does not authorise the carrying out of an activity in contravention of a chemical control order.	38 39
<b>296M</b>	<b>Licence conditions</b>	40
(1)	A condition of a licence may be imposed to prohibit or regulate one or more of the following activities in relation to a chemical—	41 42
(a)	manufacturing or processing the chemical,	43

(b)	keeping or storing the chemical,	1
(c)	distributing or transporting the chemical,	2
(d)	using the chemical,	3
(e)	selling or disposing of the chemical,	4
(f)	an activity relating to an activity referred to in paragraphs (a)–(e).	5
(2)	Without limiting subsection (1), a condition of a licence may be imposed to require steps to be taken to secure premises or a storage area in or on which a chemical is stored.	6 7 8
<b>Division 4 Assessment of technology</b>		9
<b>296N</b>	<b>Application for assessment of technology</b>	10
(1)	A person may apply to the EPA for an assessment of technology that the person proposes to use in relation to processing, remediating or disposing of—	11 12
(a)	a chemical the subject of a chemical control order, or	13
(b)	an industrial chemical.	14
(2)	The application must be in the approved form.	15
(3)	The EPA may require the application to be accompanied by the fee prescribed by the regulations.	16 17
<b>296O</b>	<b>Requirement for assessment of technology</b>	18
	If a licence application has been made, the appropriate regulatory authority may, by written notice given to the applicant, require the applicant to apply to the EPA for an assessment of technology under section 296N if the authority considers it necessary to properly assess the application.	19 20 21 22
<b>Division 5 Forfeiture of chemicals</b>		23
<b>296P</b>	<b>Forfeiture of substances and containers by order of court</b>	24
(1)	The Land and Environment Court may order the forfeiture of the following if a person is convicted of an offence against this part—	25 26
(a)	all or part of the chemical or a container of the chemical in relation to which the offence was committed,	27 28
(b)	a substance or container of a substance seized in connection with the offence.	29 30
(2)	On the making of the order, the chemical or container becomes the property of the Crown.	31 32
<b>296Q</b>	<b>Retention and disposal of seized property</b>	33
(1)	During the prescribed period, the EPA may do one or more of the following in relation to a substance or container seized under section 198 (a <i>seized substance or container</i> )—	34 35 36
(a)	keep the seized substance or container,	37
(b)	return the seized substance or container to the person—	38
(i)	from whom it was seized, or	39
(ii)	who appears to the EPA to be its owner,	40

(c)	by written notice published on the EPA’s website, advertise that an application will be made on a specified day for forfeiture to the Crown of the seized substance or container.	1 2 3
(2)	The Land and Environment Court may, after determining the application, order—	4 5
(a)	the return of the seized substance or container to a specified person, or	6
(b)	the forfeiture to the Crown of the seized substance or container.	7
(3)	If not sooner forfeited or returned, a seized substance or container must, after the expiry of the prescribed period, be returned to the person—	8 9
(a)	from whom it was seized, or	10
(b)	who appears to the EPA to be its owner.	11
(4)	In this section—	12
	<i>prescribed period</i> means—	13
(a)	a period of 6 months commencing from the day of the seizure of the substance or container, or	14 15
(b)	a longer period specified by the Land and Environment Court on the application of the EPA.	16 17
<b>296R</b>	<b>Disposal of forfeited property</b>	18
(1)	A substance or container forfeited to the Crown must be disposed of in accordance with the direction of the EPA.	19 20
(2)	If a substance or container is disposed of by selling, the proceeds must be paid into the Consolidated Fund.	21 22
<b>[12]</b>	<b>Sections 297A and 297B</b>	23
	Re-number sections 296 and 297 as sections 297A and 297B, respectively.	24
<b>[13]</b>	<b>Section 308 Public register</b>	25
	Insert after section 308(2)(i)—	26
(i1)	for the EPA—details of each chemical use notice published under Part 9.3E, Division 2,	27 28
(i2)	for the EPA—details of each chemical control order published under Part 9.3E, Division 3,	29 30
<b>[14]</b>	<b>Section 319 Disclosure of information</b>	31
	Insert “or the management of chemicals” after “environment” in section 319(1)(e).	32
<b>[15]</b>	<b>Schedule 1 Scheduled activities</b>	33
	Insert after clause 18—	34
<b>18A</b>	<b>Environmentally hazardous chemicals</b>	35
(1)	This clause applies to the following (each an <i>environmentally hazardous activity</i> )—	36 37
(a)	an activity regulated by a chemical control order in relation to a chemical,	38 39
(b)	an activity—	40
(i)	described in this schedule, whether or not the activity is also declared to be a scheduled activity, and	41 42



	(ii) involving the use or manufacture of a Schedule 6 or 7 chemical that is subject to a restriction or risk management measure in the NSW IChEMS register.	1 2 3
	(2) An environmentally hazardous activity to which this clause applies is declared to be a scheduled activity.	4 5
<b>[16]</b>	<b>Schedule 1, clause 46</b>	6
	Insert after clause 45—	7
	<b>46 Environmentally hazardous chemicals—non-premises based</b>	8
	(1) This clause applies to the following (each an <i>environmentally hazardous activity</i> )—	9 10
	(a) an activity regulated by a chemical control order in relation to a chemical,	11 12
	(b) an activity—	13
	(i) described in this schedule, whether or not the activity is also declared to be a scheduled activity, and	14 15
	(ii) involving the use of a Schedule 6 or 7 chemical that is subject to a restriction or risk management measure in the NSW IChEMS register.	16 17 18
	(2) An environmentally hazardous activity to which this clause applies is declared to be a scheduled activity.	19 20
<b>[17]</b>	<b>Schedule 1, clause 50(1)</b>	21
	Insert in alphabetical order—	22
	<i>Schedule 6 or 7 chemical</i> means a chemical listed as a Schedule 6 or Schedule 7 chemical in the NSW IChEMS register.	23 24
<b>[18]</b>	<b>Schedule 2 Regulation-making powers</b>	25
	Insert “or volatile organic liquids” after “fuels” wherever occurring in clause 6A(2) and (3).	26
<b>[19]</b>	<b>Schedule 2</b>	27
	Insert at the end of the schedule, with appropriate clause numbering—	28
	<b>Chemicals</b>	29
	(1) Prohibiting or regulating the use or manufacture of chemicals, including products or articles containing industrial chemicals.	30 31
	(2) In this clause—	32
	<i>article</i> has the same meaning as in the <i>Industrial Chemicals Act 2019</i> of the Commonwealth.	33 34
	<i>manufacture</i> —see section 296.	35
	<i>use</i> —see section 296.	36
<b>[20]</b>	<b>Schedule 5 Savings, transitional and other provisions</b>	37
	Insert at the end of the schedule, with appropriate part and clause numbering—	38

<b>Part</b>	<b>Provisions consequent on enactment of Environmental Legislation Amendment (Hazardous Chemicals) Act 2024</b>	1
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		3
	<b>Definitions</b>	4
	In this part—	5
	<i>environmentally hazardous chemical licence</i> means a licence within the meaning of the <i>Environmentally Hazardous Chemicals Act 1985</i> , as in force immediately before its repeal.	6
		7
		8
	<i>repealed Act</i> means the <i>Environmentally Hazardous Chemicals Act 1985</i> .	9
	<b>Continuation of chemical control orders and declarations of chemical waste</b>	10
(1)	The repeal of the repealed Act does not affect the continued operation of a chemical control order.	11
		12
(2)	On the repeal of the repealed Act, each declared chemical waste is taken to be an environmentally hazardous chemical under this Act.	13
		14
(3)	In this clause—	15
	<i>chemical control order</i> means an order in force under the repealed Act, section 22 or 23, immediately before its repeal.	16
		17
	<i>declared chemical waste</i> means a substance the subject of an order in force under the repealed Act, section 10, immediately before its repeal.	18
		19
	<b>Determination of pending applications relating to environmentally hazardous chemical licences</b>	20
		21
(1)	An application for an environmentally hazardous chemical licence made under the repealed Act, but not yet determined on the commencement of this clause, must be determined as if it were an application for an environment protection licence under section 53.	22
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(2)	An application for the transfer of an environmentally hazardous chemical licence made under the repealed Act, but not yet determined on the commencement of this clause, must be determined as if it were an application for the transfer of an environment protection licence under section 54.	26
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		29
(3)	A fee paid in relation to an application referred to in subsections (1) and (2) is taken to be a fee paid in relation to the application under this Act.	30
		31
	<b>Conversion of environmentally hazardous chemical licences</b>	32
(1)	An environmentally hazardous chemical licence in force immediately before the repeal of the repealed Act is taken to be an environment protection licence issued under this Act (a <i>converted licence</i> ).	33
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		35
(2)	A converted licence is subject to the same conditions, and authorises the same activities, as the environmentally hazardous chemical licence.	36
		37
(3)	The appropriate regulatory authority may reissue a converted licence to vary the conditions of the licence in accordance with section 58.	38
		39
(4)	A converted licence remains in force, unless sooner surrendered, suspended or revoked, until the end of the period that the environmentally hazardous chemical licence would have remained in force if the licence had not been converted under this clause.	40
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		43
(5)	The holder of a converted licence does not commit an offence under section 153A if, no later than 3 months after the commencement of this clause, the	44
		45

holder prepares a pollution incident response management plan that complies with Part 5.7A in relation to the activity to which the licence relates.	1 2
(6) Section 57 does not apply to a converted licence.	3
<b>Determination of pending applications for technology assessments</b>	4
(1) An application for an assessment of technology made under the repealed Act, but not yet determined on the commencement of this clause, must be determined as if it were an application for an assessment of technology under section 296N.	5 6 7 8
(2) A fee paid in relation to an application referred to in subsection (1) is taken to be a fee paid in relation to the application under this Act.	9 10
<b>[21] Dictionary</b>	11
Omit the definition of <i>clean-up action</i> .	12
Insert in alphabetical order—	13
<i>chemical control order</i> has the same meaning as in section 296I(1).	14
<i>chemical use notice</i> has the same meaning as in section 296F(1).	15
<i>clean-up action</i> , in relation to a pollution incident, includes the following—	16
(a) action to prevent, minimise, remove, disperse, destroy or mitigate pollution resulting or likely to result from the incident,	17 18
(b) ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution,	19 20
(c) preparing and carrying out a remedial plan of action,	21
(d) action to remove or store the following—	22
(i) waste disposed of on land unlawfully,	23
(ii) chemicals,	24
(iii) products or articles containing chemicals.	25
<i>Commonwealth register</i> , for Part 9.3E, Division 1—see section 296.	26
<i>environmentally hazardous chemical</i> means a chemical the subject of a chemical control order.	27 28
<i>industrial chemical</i> , for Part 9.3E, Division 1—see section 296.	29
<i>manufacture</i> , for Part 9.3E, Division 1—see section 296.	30
<i>NSW IChEMS register</i> has the same meaning as in section 296A(1).	31
<i>use</i> , for Part 9.3E, Division 1—see section 296.	32

<b>Schedule 2</b>	<b>Other amendments</b>	1
<b>2.1</b>	<b>Fair Trading Act 1987 No 68</b>	2
	<b>Schedule 1 Paramount legislation</b>	3
	Omit “ <i>Environmentally Hazardous Chemicals Act 1985</i> ”.	4
<b>2.2</b>	<b>Land and Environment Court Act 1979 No 204</b>	5
	<b>Section 17 Class 1—environmental planning and protection appeals</b>	6
	Omit section 17(f).	7
<b>2.3</b>	<b>Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	8
	<b>Schedule 2 Search warrants under other Acts</b>	9
	Omit “ <i>Environmentally Hazardous Chemicals Act 1985</i> , section 46”.	10
<b>2.4</b>	<b>Protection of the Environment Administration Act 1991 No 60</b>	11
<b>[1]</b>	<b>Section 3 Definitions</b>	12
	Omit section 3(1), definition of <i>environment protection legislation</i> , paragraph (e).	13
<b>[2]</b>	<b>Section 34A Environment Protection Authority Fund</b>	14
	Omit section 34A(3)(b)(iv).	15
<b>2.5</b>	<b>Protection of the Environment Operations (General) Regulation 2022</b>	16
<b>[1]</b>	<b>Section 73</b>	17
	Omit the section. Insert instead—	18
	<b>73 Additional matters to be included in PIRM plan—the Act, s 153C</b>	19
	(1) For the Act, section 153C(d), the following must be included in a PIRM plan for a relevant licence—	20
	(a) the names, positions and 24-hour contact details of each individual who is—	21
	(i) responsible for activating the PIRM plan, or	22
	(ii) authorised to notify relevant authorities under the Act, section 148, or	23
	(iii) responsible for managing the response to a pollution incident,	24
	(b) the contact details of each relevant authority referred to in the Act, section 148,	25
	(c) a community engagement protocol that includes procedures for notifying people living or working near a pollution incident and keeping them informed of relevant matters,	26
	(d) details of pre-emptive action required to minimise or prevent a risk of harm to human health or the environment arising out of the activity, including, as a minimum, action that complies with the requirements set out in the <i>Protection of the Environment Operations (Waste) Regulation 2014</i> , clauses 70, 72 and 73,	27
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(e)	the nature and objectives of a staff training program in relation to the PIRM plan,	1
		2
(f)	the date on which the PIRM plan is tested and the name of the person who carried out the test,	3
		4
(g)	the method for testing and maintaining the PIRM plan.	5
(2)	Section 72 does not apply to a PIRM plan for a relevant licence.	6
(3)	In this section—	7
	<b>relevant licence</b> means a licence authorising the following—	8
(a)	an environmentally hazardous activity within the meaning of the Act, Schedule 1, clause 46,	9
		10
(b)	an activity to which the Act, Schedule 1, clause 48 applies.	11
<b>[2]</b>	<b>Section 154A</b>	12
	Insert after section 154—	13
<b>154A</b>	<b>Application fee for assessment of technology—the Act, s 296N</b>	14
	The following amounts are prescribed as the fee payable under the Act, section 296N in relation to an application made during the following periods—	15
		16
(a)	in the financial year 2023–24—\$10,755,	17
(b)	in the financial year 2024–25—\$11,150,	18
(c)	in the financial year 2025–26—\$11,570,	19
(d)	in the financial year 2026–27—\$11,990,	20
(e)	for each subsequent financial year—the amount calculated using the formula and method specified in section 18(1)(f), (2) and (3).	21
		22
<b>[3]</b>	<b>Schedule 1 Licensing fees</b>	23
	Insert before the matter relating to <b>EXTRACTIVE ACTIVITIES</b> —	24
	<b>ENVIRONMENTALLY HAZARDOUS CHEMICALS</b>	
	<b>Administrative fee</b>	<b>Administrative fee units</b>
	Environmentally hazardous activities—premises based	5
<b>[4]</b>	<b>Schedule 1</b>	25
	Insert after the matter relating to <b>WOOD PRESERVATION</b> —	26
	<b>ENVIRONMENTALLY HAZARDOUS CHEMICALS</b>	
	<b>Administrative fee</b>	<b>Administrative fee units</b>
	Environmentally hazardous activities—not premises based	4
<b>[5]</b>	<b>Schedule 6 Penalty notice offences</b>	27
	Omit the matter relating to <b>Environmentally Hazardous Chemicals Act 1985</b> from the table.	28
		29
<b>[6]</b>	<b>Schedule 6, table</b>	30
	Insert in appropriate order under the heading <b>Protection of the Environment Operations Act 1997</b> —	31
		32

Section 296F(7)	2	\$7,500	\$15,000
Section 296L(1)	2	\$7,500	\$15,000

## 2.6 Water NSW Regulation 2020

1

### Clause 3 Definitions

2

Omit “*Environmentally Hazardous Chemicals Act 1985*” from clause 3(1), definition of *environmentally hazardous chemical*.

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Insert instead “*Protection of the Environment Operations Act 1997*”.

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