




Tabled, by leave, by *Ms Sheppe*

Clerk of the Parliaments
8 / 2 / 2024

ENVIRONMENTAL LEGISLATION AMENDMENT (HAZARDOUS CHEMICALS) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

There are more than 40,000 industrial chemicals currently available for use in Australia. Most are not harmful to people or the environment when used as intended. However, a small proportion of industrial chemicals can cause serious harm to the environment and human health if not managed properly. Poor management of the environmental risks of industrial chemicals can result in:

- pollution of the environment due to emissions or wastes from manufacture or product formulation
- harm to the community or environment from incorrect storage or handling - e.g., leaks and spills
- contamination of land and water from poor disposal practices
- environmental and human health risks from high-risk industrial chemicals
- costs associated with legacy issues – e.g., cleaning up contaminated sites

The *Environmental Legislation Amendment (Hazardous Chemicals) Bill 2024* (Bill) seeks to strengthen the regulation of industrial chemicals in NSW. The Bill will achieve this by:

a) Implementing the Industrial Chemicals Environmental Management Standard

National frameworks exist to consistently manage products used in food, human and veterinary medicines and pesticides. However, until very recently, there has not been a mechanism to consistently manage risks to the environment from industrial chemicals across all jurisdictions. This has resulted in uncertainty, duplication and increased costs for businesses who use or manufacture industrial chemicals.

To address this gap, the Commonwealth, state and territory governments have worked together to develop the Industrial Chemicals Environmental Management Standard (IChEMS). Under IChEMS, industrial chemicals are listed on the IChEMS register in one of seven schedules, based on an assessment of their environmental risk. The register may outline specific measures to manage the risks posed by the industrial chemical, providing clarity for industry as to what needs to be done to prevent harm to the environment.

Public consultation undertaken by the Commonwealth in 2020 and 2022 indicated broad support for IChEMS amongst national bodies, government agencies and other interested organisations and individuals.

All Australian states and territories have agreed to implement IChEMS through their environmental protection frameworks to make it legally enforceable in their jurisdiction. This will for the first time harmonise standards for the environmental risk management of industrial chemicals across Australia. The Bill fulfils NSW's commitment to other jurisdictions and the Commonwealth to implement IChEMS in NSW.

b) Enhancing regulatory oversight of emerging problem chemicals

The Bill will allow the Environment Protection Authority (EPA) to require manufacturers and users of a specified chemical in NSW to notify and provide information about that chemical to the EPA. The proposed change is needed to support the implementation of the IChEMS reforms. It will provide the EPA with greater visibility over the number of potentially harmful chemicals being used in NSW, as well as how and in what quantities they are being used. Currently this information is not routinely captured through licencing or other regulatory activities. Having this information will assist the EPA to assess the need for action to protect the community and environment from environmental threats posed by chemicals.

c) Streamlining regulatory requirements for managing environmental risks of industrial chemicals

The Bill will transfer key provisions of the *Environmentally Hazardous Chemicals Act 1985* (EHC Act) to the *Protection of the Environment Operations Act 1997* (POEO Act), allowing for the repeal of the EHC Act. This will simplify and modernise the environmental regulation of industrial chemicals in NSW as one Act will provide the legislative requirements relating to industrial chemicals and the implementation of the IChEMS reforms.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill aims to better protect the environment and human health from the risks posed by industrial chemicals. Key benefits include:

- harmonising industrial chemical environmental risk management requirements and simplifying compliance for businesses that operate across NSW's borders
- providing the community with knowledge of the risks posed by particular industrial chemicals as well the actions that are being taken to protect the environment and their health
- reducing the risk of chemical contamination and pollution in NSW by requiring better chemical management practices by industry
- ensuring the highest-risk chemicals are more tightly regulated or phased out

- enabling the EPA to assess whether action is needed to protect the community and environment from the adverse impacts of emerging problem chemicals
- making it easier for businesses who use industrial chemicals to fulfil their regulatory responsibilities to prevent environmental harm and to make informed choices about which chemicals they use.

Options: What alternative policies and mechanisms were considered in advance of the Bill?

The EPA considered two alternative approaches to implementing IChEMS:

- a non-regulatory approach – i.e., providing information to industry/ businesses about IChEMS and encouraging compliance
- implementing IChEMS and associated reforms through the EHC Act

Analysis: What were the pros/cons and benefits/costs of each option considered?

The benefits/ costs of a non-regulatory approach to implementing IChEMS included:

Benefits:

- lower compliance costs for industry as it would not be mandatory to comply with IChEMS scheduling decisions
- no enforcement costs as the current regulatory framework would apply

Costs:

- more resourcing would be required to encourage and support industry to implement IChEMS scheduling decisions
- higher clean-up costs for contamination or other releases to the environment as high chance that IChEMS scheduling decisions would not be complied with by industry
- the approach in NSW would be different to that of other states and territories resulting in additional complexity and a lack of clarity and certainty for industry
- costs to government from the consideration or regulation of industrial chemicals on a case-by-case basis (as occurs currently) compared to the adoption of IChEMS scheduling decisions
- the EPA would need to rely on licensing conditions or a Chemical Control Order to obtain data about the use of a chemical – these instruments have administrative costs and are more burdensome to implement than a notification power
- duplicative licensing arrangements would remain under the EHC Act and POEO Act – this is burdensome for both industry and the regulator

The benefits/ costs of implementing IChEMS through the EHC Act included:

Benefits:

- EHC licences and other EHC Act provisions would not need to be transferred to POEO Act – small, short term administrative/ IT cost savings for EPA

Costs:

- duplicative licensing arrangements for businesses who currently hold a licence under the POEO Act and EHC Act would continue
- EPA would need to continue to administer the two existing licencing systems
- two Acts would provide the legislative requirements relating to industrial chemicals and IChEMS resulting in additional complexity and a lack of clarity for industry and other stakeholders

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments will commence on the date of assent.

The POEO Act is administered by the EPA. The EPA will ensure that stakeholders are informed of any changes, and make sure they understand what is required from them. Stakeholders will also be supported with updated information on the EPA website.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

In early October 2023, the EPA publicly released a consultation draft Bill and Explanatory Paper for comment. The consultation ran until late November for a period of six weeks. The EPA directly contacted over 200 stakeholders, including licence holders, local councils, industry groups, non-government agencies and environment groups, advising them of the consultation and the opportunity to provide feedback. The consultation draft Bill and Explanatory Paper were available on the EPA's website for any interested stakeholder to provide comment.

Over the course of the consultation, there were a total of 778 hits to the consultation page on the EPA's website and 208 downloads of documents.

The EPA received five written submissions from industry groups and licence holders, all of which expressed support for the proposed reforms with some requests for clarification on certain aspects of the Bill.

The EPA has also undertaken targeted consultation with government agencies and held discussions with other states and territories to highlight best practice approaches.