



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and offences in the Act as a consequence of the repeal of the *Environmentally Hazardous Chemicals Act 1985* (the **repealed Act**), and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chemicals and deals with certain licences, applications and orders in the Act as a consequence of the repeal of the repealed Act.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*.