Industrial Chemicals (Notification and Assessment) Bill 1989

Date Introduced: 6 September 1989
House: House of Representatives
Portfolio: Industrial Relations

Digest of Bill

Purpose
To establish an inventory and assessment system for certain industrial chemicals and create offences for the unauthorised importation or manufacture of those chemicals.

Background
Chemicals are used in a wide variety of industrial processes and in virtually every commodity including, textiles, paints, plastics, adhesives, cleaners, and pesticides. It is estimated that there are 25,000 to 30,000 industrial chemicals in Australia which are formulated into approximately 80,000 trade name chemical products.¹

The inadvertent exposure of people and the environment to chemicals can have adverse effects, including illness and death. Work related exposure to chemicals can occur in a factory, a farm or elsewhere. The public as well as workers can be exposed to hazardous chemicals through emissions to air, water and soil from industrial plants, through accidents and spillage during transport, storage and use, through inadequate waste disposal methods, or by ingestion of contaminated water and food. The extent of chemical related injury and disease in Australia is difficult to define because of the inadequate and non-systematic way that information has been collected.

Australian legislative arrangements for managing chemicals are fragmented and numerous. Commonwealth legislation includes clearance processes for agricultural chemicals, veterinary drugs and therapeutics; a scheduling system for drugs and poisons; and customs and quarantine controls. The States and Territories have the majority of the powers for controls and restrictions on chemicals. There are many State and Territory acts and regulations which cover chemicals, including dangerous goods, pesticides and poisons. However, unlike other classes of chemicals, there is no mandatory assessment of industrial chemicals prior to their use in Australia.

The establishment of a national chemicals notification and assessment scheme has been a central feature of many chemical management strategy reports. In 1977, the Australian Environment Council (AEC) adopted a national action plan on environmentally hazardous chemicals which provided a system of managing chemicals in Australia. Central to the AEC’s strategy was the establishment of
a national chemical notification and assessment scheme. The scheme was to provide a mechanism for evaluating new and in use chemicals. In October 1981, the AEC commenced a voluntary interim notification and assessment scheme for new industrial chemicals.

In 1982, the House of Representatives Standing Committee on Environment and Conservation held an inquiry into the management of chemicals potentially hazardous to health and the environment. The Committee's recommendations included that a mandatory notification and assessment scheme for new chemicals be implemented without delay and that the Commonwealth exercise its full constitutional powers to provide the legislative backing for the scheme as a matter of urgency.²

In July 1983, the AEC announced that a mandatory chemical notification and assessment scheme would be developed, to commence in 1985. In June 1984, the AEC released a discussion paper on the proposed scheme. Under the proposed scheme importers and manufacturers would be required to notify their intention to introduce new chemicals and provide prescribed information for an assessment of the health and environmental hazards of the chemical. Similarly, importers and manufacturers of chemicals already in use which are of potential concern for health or environmental reasons would be required to notify prescribed information. The discussion paper also proposed the establishment of an inventory of chemical substances. The inventory was to be the means for distinguishing between new chemicals and existing chemicals. Any chemical not listed in the inventory would be considered to be a new chemical and become subject to the notification requirements of the scheme. On 6 January 1986, the Minister for Arts, Heritage and Environment announced the establishment of the inventory.

In September 1988, the Government announced that it had decided to proceed with the preparation of legislation providing for a national notification and assessment of industrial chemicals scheme and that the National Occupational Health and Safety Commission (the Commission) would administer the scheme.

In May 1989, the National Occupational Health and Safety Commission (Worksafe Australia) issued a National Strategy for the Management of Chemicals Used at Work. The strategy built on existing activities of Worksafe Australia and work of the AEC. The strategy aims to reduce chemical related occupational injury and disease in Australia. The strategy has four principal elements: assessment of hazards of chemicals and the causes of chemical related injury and disease; information and education; workplace exposure control; and requirements of the emergency services. Worksafe Australia, in common with the AEC's approach, emphasised the need for a national scheme for the notification and assessment of industrial chemicals and announced that the development of legislation for a national industrial chemicals notification and assessment scheme was underway and would provide for assessment of all new industrial chemicals introduced into Australia by import or by manufacture, and for the assessment of selected existing chemicals. The scheme would be administered by Worksafe Australia which will carry out the toxicological and occupational health and safety assessments of chemicals. The assessment will take into account potential hazards and risks in the workplace and be incorporated into an assessment report along with a public health assessment and an environment assessment.³
Main Provisions

The object of the Bill will be to provide a national system of notification and assessment of industrial chemicals for a number of purposes, including giving effect to Australia's obligations under international agreements (clause 3).

Clause 4 makes it clear that the Bill, in relation to industrial chemicals manufactured in Australia, will apply to foreign and trading corporations; the supply of industrial chemicals in the course of trade and commerce between States, States and Territories, and within Territories; and the supply of industrial chemicals to Commonwealth or Territory authorities and instrumentalities.

'Chemical' is defined in clause 6 to include: a chemical element, including a chemical element contained in a mixture; a compound or composite of a chemical element, including a compound or composite contained in a mixture; a UVCB (i.e. a chemical of unknown or changeable composition, a complex product of a chemical reaction, or biological material other than a whole animal or plant); and a naturally occurring chemical. The term 'chemical' will not include a manufactured article that does not change its chemical composition when used; a radioactive chemical; or a mixture of chemicals (i.e. a combination of chemicals resulting from deliberate mixing, or from a chemical reaction).

'Industrial chemical' is defined in clause 7 to be a chemical that has an industrial use. The term 'industrial use' will not include use as an agricultural, veterinary, or therapeutic chemical; as a chemical used as food; or as a chemical food additive.

Part 2 of the Bill (clauses 11 - 20) deals with the Australian Inventory of Chemical Substances (the Inventory). The Director of Chemicals Notification and Assessment (the Director) is to keep the Inventory that was previously kept by the Department of the Arts, Sport, the Environment, Tourism and Territories (see above) (clause 11). The Inventory is to consist of two sections, a non-confidential section and a confidential section. The non-confidential section will hold particulars about industrial chemicals accepted by the Department before the commencement of the Bill. The confidential section will hold particulars about industrial chemicals that the Department decided, in response to a request for confidentiality of an industrial chemicals particulars, and prior to the commencement of the Bill, that publication could prejudice substantially the commercial interests of a person who made the request (clause 12).

The Director must include a new industrial chemical in the Inventory where five years has passed since it received an assessment certificate. Where publication of the industrial chemicals particulars could prejudice substantially the commercial interests of the applicant. The industrial chemical is to be listed in the confidential section of the Inventory (clause 14). The Director is to make copies of the non-confidential section of the Inventory available for sale to, or inspection by the public (clause 15).

Clause 19 provides that an industrial chemical listed in the confidential section of the Inventory is to be transferred to the non-confidential section
three years from the commencement of the Bill, unless the holder of the confidence has requested the Director not to, and the Director is satisfied that publication of the particulars of the industrial chemical could prejudice substantially the commercial interests of the holder of the confidence.

Part 3 of the Bill (clauses 21 - 80) deals with the process of notification and assessment of industrial chemicals. It will be an offence for a person to knowingly or recklessly introduce a new industrial chemical unless they hold an assessment certificate for that industrial chemical. The maximum penalty for a breach of this provision will be a $30,000 fine. The prohibition will not apply in certain circumstances, including where prior to the commencement of the Bill a person had arranged to introduce a new industrial chemical. The prohibition will also not apply to up to 50 Kg a year of a new industrial chemical introduced for research, development or analysis purposes (clause 21).

Clauses 23 - 30 deal with the notification procedures for a new industrial chemical. An application for an assessment certificate is to be accompanied by a notification statement which is to contain matters specified in Parts A - C of the Schedule to the Bill (e.g. a summary of the chemicals health effects and environment effects and certain technical data about the chemical) (clause 23). The Director may waive the requirements of clause 23 in certain instances, including where the chemical is listed in a prescribed international inventory of chemicals (clause 24). Clause 30 provides that the Minister may allow the introduction of a new industrial chemical without an assessment certificate where satisfied that it is in the public interest to do so, and this is consistent with the reasonable protection of occupational health and safety, public health, and the environment.

Clauses 31 - 40 deal with the assessment and assessment report for a new industrial chemical. Basically, an assessment will be a determination of the risk of adverse health, safety, or environmental effects that could be caused by the introduction of the new industrial chemical (clause 32). The assessment report is to include a summary of the matters looked at in the assessment and certain recommendations in relation to the new industrial chemical, including: precautions and restrictions to be observed during the importation, manufacture, handling, storage, use or disposal of the chemical; controls to limit emissions of the chemical into the environment; the packaging, labelling, handling or storage of the chemical; and the uses of the chemical (clause 33).

Clauses 47 - 63 deal with the assessment of industrial chemicals already listed in the Inventory and certain new industrial chemicals (e.g. a new industrial chemical introduced for research, development or analysis purposes). Where the Director has reasonable grounds for believing that the manufacture, handling, storage, use or disposal of a listed industrial chemical may give rise to an adverse health or environmental risk, the Director may recommend to the Minister that the chemical be declared a priority chemical (clause 48). Clause 49 provides for the acquisition of information to make a recommendation under clause 48. The Director may issue a notice directing that certain information be provided about a chemical. It will be an offence for a person, without
reasonable excuse, to refuse or fail to comply with a notice. The maximum penalty for breach of this provision will be a fine of $6000. A declaration by the Minister that an industrial chemical is a priority chemical may be expressed to apply either generally, or to specific uses, area’s, or circumstances (clause 51).

It will be an offence for a person to knowingly or recklessly introduce a priority chemical unless they have applied for an assessment of the chemical. The maximum penalty for a breach of this provision will be a fine of $12 000 (clause 56). Basically, the assessment and assessment report of a priority chemical will be the same as for new industrial chemicals, except that the Director may initiate an assessment in respect of priority chemicals (clause 57).

Where the Minister has reasonable grounds for believing that an activity involving a priority chemical (e.g. the importation, manufacture, or use of a chemical) gives rise to an unacceptable health or environmental risk, the Minister may prohibit that activity. It will be an offence for a person, an importer, or manufacturer of industrial chemicals, without reasonable excuse, to refuse or fail to comply with a notice to stop the activity. The maximum penalty for breach of this provision will be a fine of $30 000 for an importer or manufacturer, and $24 000 for other persons (clause 61). Clause 63 provides that where a chemical has been a priority existing chemical for at least 12 months, and an application for the assessment of the chemical has not been received, or the Director has not directed that it be assessed, the Director is to remove particulars of the chemical from the Inventory.

A second notification and assessment of a chemical (a secondary notification and assessment) will occur in certain circumstances, such as where the function or use of the chemical has changed, or is likely to change significantly, or additional information has become available as to the adverse health or environmental effects of the chemical. It will be an offence for a person to not notify the Director within 28 days that such circumstances have occurred. The maximum penalty for breach of this provision will be a fine of $12 000 (clause 64). Where a secondary notification is required and the Director has directed a person to make a secondary notification, and they have not complied, the Minister may, for a new industrial chemical, suspend any assessment certificate or introduction permit. In any other case, the Minister may prohibit the importation or manufacture of the chemical. It will be an offence to knowingly or recklessly introduce a chemical in contravention of a Ministerial notice prohibiting the importation or manufacture of the chemical. The maximum penalty for breach of this provision will be a fine of $12 000 (clause 67). Basically, where a secondary notification has been given, the chemical will be subject to the assessment and assessment reporting provisions of a new industrial chemical (clause 68).

Clause 75 will allow the Director to exempt from publication information contained in certain applications (e.g. an application for an assessment for a new industrial chemical) where the Director is satisfied publication of the
information could reasonably be expected to prejudice substantially the commercial interests of the applicant, and the prejudice outweighs the public interest in the publication of the information. The Director is not to grant an exemption in relation to basic information about a chemical (e.g. the chemicals general uses). Clause 79 provides that the Director is to disclose exempt information about a chemical to an inquirer in certain circumstances, including where the inquiry is to gain information for the protection of occupational health and safety, public health or the environment. The person concerned need not be consulted where a delay in disclosure could result in danger to a person’s health or safety or to the environment.

It will be an offence for a person to knowingly make a statement, or give information under this Bill, that is false or misleading. The maximum penalty for a breach of this provision will be a fine $3000 (clause 81).

Clauses 84–89, and 102 provide standard administrative provision, including: power’s of inspectors in relation to the entry and searching of premises; penalties for obstructing an inspector or failing to answer certain questions; and for the review of administrative decisions.

Clause 110 provides that the regulations may prescribe certain fees, including for applications for assessment and applications to exempt information from publication.

The Governor-General may make regulations, including prescribing penalties not exceeding $1000, in the case of a person, and $5000 in the case of a corporation (clause 111).

References

For further information, if required, contact the Science, Technology and Environment Group.

18 September 1989

Bills Digest Service
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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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