



Environmental Protection (Industrial Chemicals) Regulations 2023

Information paper

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1. Introduction

The Environmental Protection (Industrial Chemicals) Regulations 2023 (Regulations) have been developed under the *Environmental Protection Act 1986* (EP Act) to regulate the safe and environmentally responsible use of industrial chemicals in Western Australia (WA). The Regulations are based on the Australian Government's national Industrial Chemicals Environmental Management Standard (IChEMS) regulatory framework which was developed by the Australian Government in collaboration with the states and territories.

The Regulations are designed to ensure companies appropriately manage industrial chemicals to prevent and minimise the risk of industrial chemicals causing environmental harm. The Regulations introduce minimum requirements for managing these environmental risks for the scheduled and unscheduled industrial chemicals and will automatically adopt scheduling decisions on the Australian Government's register for industrial chemicals. Regulations do not apply to consumers, being personal and domestic users of industrial chemicals.

The Department of Water and Environmental Regulation (the department) has prepared the consultation draft Regulations to give effect to the IChEMS framework. This document sets out the detail behind the duties and requirements that are proposed to be prescribed under the Regulations.

2. Background

The [Industrial Chemicals Environmental Management \(Register\) Act 2021](#) (Cth) (ICEMR Act) established the IChEMS to provide a nationally consistent and streamlined approach to manage and minimise environmental risks from industrial chemicals. The IChEMS applies to industrial chemicals (i.e. chemicals not regulated under the agricultural veterinary, therapeutic goods or food safety regimes). The ICEMR Act also established the [IChEMS Register](#) for the recording (scheduling) of industrial chemicals with assignment of risk management measures and, where required, prohibitions and restrictions for each chemical.

The ICEMR Act addresses regulatory gaps identified by the former Council of Australian Governments in 2006, through an approach agreed in-principle at a Meeting of Environment Ministers in July 2017. Following state and territory Environment Ministers' endorsement, [Australia's industrial chemicals roadmap: Better environmental management of chemicals](#) was released in March 2022. The roadmap sets out the implementation of the IChEMS within the various state and territory environmental protection regulatory frameworks.

In late 2022, the Australian Department of Climate Change, Energy, the Environment and Water published the IChEMS Register and commenced scheduling industrial chemicals. According to the level of concern, industrial chemicals are listed on one of seven schedules of the IChEMS Register (from lowest to highest environmental concern) with risk management measures assigned to each of them.

3. Purpose of industrial chemicals regulations

The Regulations will ensure a minimum standard for the environmental management of industrial chemicals is maintained, along with the automatic adoption of the IChEMS Register's scheduling decisions.

The consultation draft of the Regulations includes the following key focus areas:

- a general responsibility (duty) to minimise risks to the environment from industrial chemicals
- automatic adoption of the IChEMS Register's scheduling decisions into the Regulations, establishing prohibitions, restrictions and risk management measures for industrial chemicals
- exemptions from the application of the Regulations in certain circumstances
- defenses available in certain circumstances.

4. Explanation of the regulations

4.1. General duty, Regulation 5 (Part 2)

This new regulation has been developed to meet the requirement that there is a general responsibility to minimise the risks of environmental harm and pollution from the use of the industrial chemicals (or a product or article containing an industrial chemical). The new general duty will apply to scheduled and unscheduled industrial chemicals. The main intent of Regulation 5 is to ensure there is a general responsibility to manage environmental risks (one of the key IChEMS elements to implement) and capture unscheduled industrial chemicals. The [IChEMS minimum standard](#) is particularly relevant for unscheduled industrial chemicals. It sets nationally consistent, practical and risk-based baseline requirements for environmental management by businesses using industrial chemicals in Australia. The standards align with existing environment, health, safety, and duty of care obligations.

Although the IChEMS minimum standards are included as one of the measures under Regulation 5 (see Regulation 5(2)(b)) for meeting the general duty to minimise risks, the minimum standards are not defined under the "scheduling requirements". Minimum standards are dealt with separately under Regulation 5(2)(b). The reason the IChEMS minimum standard has been separated out is to maintain the enforceability of the Regulations without having to refer to an external document in the risk management measures. This way, the Regulations fully implement a baseline requirement to prevent and minimise environmental harm.

For breaches of the general duty, there are graduated penalties according to the risks. For scheduled industrial chemicals, these are linked to the Schedule of the IChEMS Register. The EP Act contains offences for causing environmental harm or pollution. The general duty complements these provisions by making it clear that preventative actions must be undertaken to ensure environmental harm or pollution does not occur from use of industrial chemicals.

4.2. Duty to comply with scheduling requirements, Regulation 6 (Part 2)

The scheduling requirements are defined in the Regulations as a prohibition, restriction, or risk management measure, but do not include the IChEMS minimum standards (see above).

Regulation 6 creates a duty to comply with the scheduling requirements, where an industrial chemical and its end use is listed in a schedule of the IChEMS Register. Scheduling decisions on the IChEMS Register will be automatically adopted. This regulation creates a universal requirement to comply with the scheduling requirements, including licence holders under the EP Act.

For breaches of this regulation, graduated penalties are provided according to the schedule on which the industrial chemical is recorded. Modified penalties are also introduced to enforce the Regulations and address non-compliance efficiently.

4.3. Exemptions, Regulations 7–11 (Part 3) Schedule 1

The consultation draft Regulations provides that the department's Chief Executive Officer (CEO) may grant an exemption from a scheduling requirement with conditions. By implementing IChEMS in WA, there is a commitment to national consistency of the regulation of industrial chemicals; however, there may be rare instances where scheduling requirements do not suit WA, and in these instances, exemptions may be granted.

Because WA does not currently have any applicable chemicals meeting the exemption requirements for listing in Schedule 1, these provisions and the Schedule will be removed from the final published version of the Regulations. Should an applicable chemical be determined for listing in the future, the exemption provisions will be reinserted along with the Schedule, which will list the relevant chemical.

4.4. Compliance notices, Regulations 12–15 (Part 4)

Under the consultation draft Regulations, inspectors and authorised persons may issue compliance notices for breaches of the new general duty (Regulation 5) and the new duty to comply with scheduling requirements (Regulation 6). This will be an additional regulatory tool to promote compliance with legislative requirements. Regulatory action is underpinned by the department's principles for better regulatory practice.

4.5. Defences, Regulation 16 (Part 5)

Under the consultation draft Regulations, there will be defences available in limited circumstances, being where an entity establishes that the failure to comply was for the purpose of preventing harm to the environment or was done to comply with another law. The defence is only valid where the entity has notified the department's CEO of the failure in writing, as soon as practicable.

5. Consultation

5.1 About stakeholder consultation

The department is seeking feedback on the consultation draft of the Regulations and will analyse submissions and make recommendations to the Minister for Environment.

By making a written submission, you are consenting to the submission being treated as a public document. Your name will be published; however, your contact address will be withheld for privacy. If you do not consent to your submission being treated as a public document, you should either mark it as confidential, or specifically identify the parts that you consider confidential, and include an explanation.

The department may request that a non-confidential summary of the material is also given. It is important to note that, even if your submission is treated as confidential by the department, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1992*, or any other applicable written law.

5.2 How to make a submission

Written submissions must be received by 5pm (WST) on 5 February 2024. No late submissions will be considered. Written submissions can be lodged by email (preferred) to chemicals@dwer.wa.gov.au or hard copies can be mailed to:

Manager, Environmental Policy

Department of Water and Environmental Regulation
Locked Bag 10
Joondalup DC
JOONDALUP WA 6919

For more information, email: chemicals@dwer.wa.gov.au