

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

TOXIC CHEMICALS (COMMUNITY RIGHT TO KNOW) BILL 1993 [NO. 2]

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 1 September 1993)

(SENATOR CHAMARETTE)

A BILL

FOR
An Act relating to toxic chemicals

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Toxic Chemicals (Community Right to Know) Act 1993 [No. 2]*.

Commencement

2.(1) This Act commences on a day to be fixed by Proclamation.

10 (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

Objects of this Act

3. The objects of this Act are:

15 (a) to make freely available to the public:
(i) information relating to the environmental and health effects of current industrial and domestic practices relating to toxic chemicals; and

- (ii) reports on releases of toxic chemicals; and
- (iii) reports on the production, processing, recycling, treating, storage, handling and disposal of toxic chemicals; and
- (iv) reports on the emergency procedures that are in place in Australia in relation to the release of toxic chemicals; and 5
- (v) reports on methods of reducing the use of toxic chemicals; and
- (b) to develop codes of practice that, as far as possible, ensure the safe use and production of toxic chemicals in Australia; and
- (c) to develop, in consultation with the States and the Territories, consistent policies relating to the use and production of toxic chemicals. 10

Act to bind Crown

4. This Act binds the Crown in right of the Commonwealth, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

Interpretation

5. In this Act, unless the contrary intention appears: 15

“**corporation**” means a trading, financial or foreign corporation within the meaning of paragraph 51(xx) of the Constitution, and includes an authority of the Commonwealth;

“**department**” means a department within the meaning of the *Public Service Act 1922*, other than: 20

- (a) the Department of the Senate;
- (b) the Department of the House of Representatives;
- (c) the Department of the Parliamentary Library; and
- (d) the Department of the Parliamentary Reporting Staff;

“**Register**” means the National Register of Toxic Chemicals maintained under section 9; 25

“**Registrar**” means the Registrar of toxic chemicals;

“**toxic chemical**” means a chemical specified in the regulations that is known to cause, or can reasonably be expected to cause, in humans: 30

- (a) cancer or teratogenic effects; or
- (b) serious or irreversible reproductive dysfunctions; or
- (c) serious or irreversible neurological disorders; or
- (d) serious or irreversible heritable genetic disorders; or
- (e) other serious, acute or chronic health effects or death.

Application

6.(1) This Act applies to:

- (a) corporations; and
- (b) departments; and
- (c) bodies established or appointed for a public purpose by or under a Commonwealth enactment; and
- (d) bodies established or appointed by the Governor-General, or by a Minister, otherwise than by or under a Commonwealth enactment; and
- (e) persons doing things in relation to toxic chemicals for the purposes of trade and commerce between Australia and another country, between a State and another State, between a State and a Territory or between a Territory and another Territory; and
- (f) all persons in a Territory.

(2) A reference in this Act to a person is, unless the contrary intention appears, a reference to a person to whom this Act applies.

PART 2—REGISTRAR OF TOXIC CHEMICALS

Division 1—Establishment and functions

Registrar of toxic chemicals

7.(1) There is to be a Registrar of toxic chemicals who is to be appointed by the Governor-General.

(2) The Registrar holds office for the period specified by the instrument of appointment but that period must not exceed five years.

(3) The Registrar is eligible for re-appointment.

Functions of Registrar

8. The functions of the Registrar are:

- (a) to maintain a national register of toxic chemicals; and
- (b) to collect information in accordance with this Act about the production and use of toxic chemicals in Australia; and
- (c) to conduct public information programs relating to toxic chemicals; and
- (d) to monitor the production and use of toxic chemicals in Australia by persons to whom this Act applies; and

- (e) to develop, together with industry bodies and community groups, codes of practice and guidelines for the production and use of toxic chemicals; and
- (f) to collect information about releases of toxic chemicals; and
- (g) to collect information about the production, processing, recycling, treating and disposal of toxic chemicals; and 5
- (h) to examine possible alternatives to the use of toxic chemicals; and
- (i) to consult with authorities of the States and Territories that have functions relating to the use and manufacture of toxic chemicals with a view to ensuring that Australia develops a consistent policy relating to that use and manufacture; and 10
- (j) to report annually to Parliament in accordance with section 21 on the operation of this Act.

Division 2—National Register of Toxic Chemicals

National Register

- 9.(1) The Registrar is to maintain a National Register of Toxic Chemicals. 15
- (2) The Register is to include:
 - (a) information about the production and use of toxic chemicals obtained under Part 3, other than information that is commercial-in-confidence; and
 - (b) information obtained by the Registrar about: 20
 - (i) the environmental and health effects of current industrial and domestic practices relating to toxic chemicals; and
 - (ii) releases of toxic chemicals; and
 - (iii) the production, processing, recycling, treating and disposal of toxic chemicals.
- (3) The Register is to be open for public inspection. Any person is entitled to be given a copy of, or an extract from, any entry in the Register. 25
- (4) The Register may be maintained in electronic form.

Division 3—Codes of Practice

Codes of practice

- 10.(1) The Registrar is to develop, in consultation with industry bodies and bodies representing the community, draft codes of practice to be observed in the production, storage, handling, transportation, use and disposal of toxic chemicals at levels that exceed the prescribed safety levels for those chemicals. 30

(2) After developing a draft code of practice, the Registrar must cause the draft code to be published in the *Gazette*, together with a notice inviting comments on the draft code, within the period of 45 days after the publication of the notice.

(3) If, after considering all comments received in relation to a draft code of practice, the Registrar considers that he or she should determine the draft code as a code of practice, the Registrar may, by notice in the *Gazette*, determine that draft code as a code of practice.

(4) A code of practice determined under this section, unless it is disallowed by a House of the Parliament, takes effect at the end of the last day on which it could be so disallowed.

Codes of practice to be disallowable instruments

11. Codes of practice determined under section 10 are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 4—Administrative provisions

Staff

12.(1) The Registrar is to be assisted by such staff members as the Minister determines. Those staff members are to be persons appointed or employed under the *Public Service Act 1922*.

(2) The Registrar has all the powers of a Secretary under the *Public Service Act 1922* as they relate to the branch of the Australian Public Service comprising the staff assisting the Registrar.

(3) The Registrar may make arrangements with an authority of the Commonwealth for the services of officers of that authority to be made available for the purposes of the Registrar.

Consultants

13. The Registrar may engage consultants to assist him or her in the performance of the Registrar's functions.

Terms and conditions applicable to the Registrar

14. The Minister is to determine in writing those terms and conditions of office of the Registrar that are not set out in this Act.

Remuneration and allowances of the Registrar

15.(1) The Registrar is to be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; or
- (b) if no determination by the Tribunal is in operation—such remuneration as is prescribed.

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(2) The Registrar is to be paid such allowances as are prescribed.

(3) The Registrar is to be paid such other benefits as the Minister determines in writing.

(4) Those other benefits may include benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave or superannuation.

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Outside employment

16.(1) The Registrar must not engage in paid employment outside the duties of his or her office without the approval of the Minister.

Leave of absence

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17.(1) The Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant leave of absence (other than recreation leave) to the Registrar on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

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Acting appointments

18.(1) If:

- (a) there is a vacancy in the office of Registrar, whether or not an appointment has previously been made to the office; or
- (b) the Registrar is absent from duty or from Australia or is otherwise unable to perform the duties of the office of Registrar;

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the Minister may appoint a person to act as the Registrar during the vacancy, absence or inability.

(2) A person appointed to act during a vacancy must not continue to act for more than 12 months.

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(3) A person acting as the Registrar under this section is entitled to the same remuneration and allowances as are payable to the Registrar.

(4) Anything done by a person purporting to act under an appointment pursuant to this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Resignation

19. The Registrar may resign from office by instrument in writing sent to the Minister.

Termination of appointment

20.(1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.

(2) If the Registrar:

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) engages, except with the approval of the Minister, in paid employment outside the duties of his or her office; or
- (c) is absent from duty, except on leave of absence granted under section 17, for 14 consecutive days or for 28 days in any year;

the Registrar's appointment may be terminated by the Governor-General.

Annual report

21.(1) The Registrar must, as soon as practicable after the end of each calendar year, give to the Minister a written report of his operations during that year.

(2) Without limiting subsection (1), the report must include the following:

- (a) details of the operation of the National Register of Toxic Chemicals;
- (b) details of the development of codes of practice;
- (c) a complete list of all codes of practice which are developed;
- (d) details of all notifications to the Registrar in accordance with sections 23 and 24;
- (e) details of all non compliance with sections 23 and 24; and
- (f) details of all exemptions granted in accordance with sections 26 and 27.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Delegation

22.(1) The Registrar may, in writing, delegate all or any of his or her powers to a member of the staff assisting the Registrar.

PART 3—DUTIES RELATING TO TOXIC CHEMICALS

Duty to notify Registrar of use or production of toxic chemicals

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23.(1) A person who, at the commencement of this Act, is producing or using toxic chemicals at levels that exceed the prescribed safety levels for those chemicals must give to the Registrar within 4 weeks after that commencement the prescribed details of that production or use.

(2) A person who, after the commencement of this Act, commences to produce or use toxic chemicals at levels that exceed the prescribed safety levels for those chemicals must give to the Registrar within 4 weeks after that commencement the prescribed details of that production or use. 10

(3) A person referred to in subsection (1) or (2) must, at the end of each anniversary after the initial notification, notify the Registrar of the person's current production and use of toxic chemicals, as prescribed. 15

(4) The details must be provided in accordance with the prescribed form.

(5) A person who fails to comply with this section is guilty of an offence.
Penalty: 2,000 penalty units.

Duty to notify Registrar of disaster recovery plan

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24.(1) A person who is under a duty to notify the Registrar in accordance with section 23 must give to the Registrar, in accordance with the times specified in section 23, a disaster recovery plan which specifies how to store, handle, transport, dispose and otherwise deal with spills or releases of toxic chemicals.

(2) A plan provided in accordance with subsection (1) must include details of: 25

(a) precautions necessary to be taken in dealing with the toxic chemical spill or release, including information as to whether:

- (i) the toxic chemical is injurious to life;
- (ii) the type of life to which it is injurious; and
- (iii) the nature of the injury; and

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(b) the likely spread, drift, flow or penetration of the toxic chemical spill or release and advice on common containment procedures; and

- (c) any other characteristics of the toxic chemical, knowledge of which would assist with its speedy and safe containment.

(3) The details of the disaster recovery plan must be provided in accordance with the prescribed form which may include a requirement for diagrams and plans.

- 5 (4) A person who fails to comply with this section is guilty of an offence.
Penalty: 500 penalty units.

Compliance with codes of practice

25 25. A person who is subject to a code of practice in force under section 10 must not breach that code in relation to the production or use of toxic chemicals.

10 Penalty: 500 penalty units.

Exemption for information that is commercial-in-confidence

15 26.(1) A person may apply to the Registrar for an exemption from compliance with this Act on the grounds that the identity of a chemical is commercial-in-confidence information where all of the following conditions are met:

- 15 (a) that the identity of the chemical has never previously been disclosed to an employee of the applicant not bound by a confidentiality agreement;
- (b) that no person to whom this Act applies has ever rejected a claim by the applicant that the chemical is a trade secret or that its identity may be treated as commercial-in-confidence information;
- 20 (c) that competitors could deduce the use or identity of the chemical from the notification form;
- (d) that knowledge of the identity of the chemical could cause "substantial competitive harm" to the applicant;
- 25 (e) that the identity of the chemical could not be discerned by reverse engineering or any other method from the applicant's products or releases;
- (f) that the applicant has taken all reasonable measures to protect the identity of the chemical;
- 30 (g) that the precise use of the chemical by the applicant is not available in any information source accessible to the public;
- (h) that the identity of the chemical need not be disclosed under any other law.

(2) An application shall be in the prescribed form.

(3) The Registrar may grant to the applicant an exemption from compliance if the Registrar is satisfied that the conditions specified in subsection (1) have been met.

(4) The grant of an exemption shall be by notice in writing given to the applicant.

(5) The notice shall specify the period during which the exemption is to remain in force.

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(6) An applicant may seek an extension of the exemption and such an application for extension shall be treated in accordance with this section.

Exemption on the grounds of military security

27.(1) A person may apply to the Registrar for an exemption from compliance with this Act on the grounds that the identity of a chemical relates to military security where all of the following conditions are met:

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- (a) that the Registrar has not previously rejected an application for exemption for that chemical by the applicant;
- (b) that a foreign power could not deduce the military purpose from information about the chemical provided on the notification form;
- (c) that public knowledge of the identity of the chemical could cause a substantial threat to national security;
- (d) that the identity of the chemical could not be discerned by reverse engineering or any other method from the applicant's products or releases;
- (e) that the applicant has taken all reasonable measures to protect the identity of the chemical;
- (f) that the precise use of the chemical by the applicant is not available in any information source accessible to the public or to a foreign power; and
- (g) that the identity of the chemical need not be disclosed under any other law.

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(2) An application shall be in the prescribed form.

(3) The Registrar may grant to the applicant an exemption from compliance if the Registrar is satisfied that the conditions specified in subsection (1) have been met.

(4) The grant of an exemption shall be by notice in writing given to the applicant.

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(5) The notice shall specify the period during which the exemption is to remain in force.

(6) An applicant may seek an extension of the exemption and such an application for extension shall be treated in accordance with this section.

PART 4—MISCELLANEOUS

Provision of false or misleading information to be an offence

5 28. If a person, in purported compliance with a provision of this Act, supplies information to the Registrar that is to the knowledge of the person false or misleading in a material particular, the person is guilty of an offence.
Penalty: 100 penalty units.

Non-application of Part IV of the *Freedom of Information Act 1982*

10 29. Part IV of the *Freedom of Information Act 1982* does not apply to documents relating to matters provided for in this Act.

Regulations

15 30. The Governor-General may make regulations prescribing matters:
(a) required or permitted to be prescribed by this Act; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.



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