Regulatory Impact Statement

Proposed Environmentally Hazardous Chemicals Regulation 2017

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Environment Protection Authority

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Executive summary

In New South Wales, the *Environmentally Hazardous Chemicals Act 1985* (EHC Act) and the Environmentally Hazardous Chemicals Regulation 2008 (the EHC Regulation) provide a framework for regulating environmentally hazardous chemicals at various points throughout their life cycle, from manufacture through to disposal. The legislation aims to minimise the potential risks to human health and the environment from hazardous industrial chemicals and chemical waste. Often these chemicals are the subject of controls or phase-outs under national and international treaties. The NSW Environment Protection Authority (EPA) administers this legislation.

The continual development of new industrial chemicals and chemical processes and technologies, coupled with the increasing number of chemicals subject to international conventions and controls, has meant that regulators need to have a range of flexible chemical management options available. The EPA has therefore commenced a fundamental review of the EHC legislation to modernise and streamline it.

In addition, the Council of Australian Governments (COAG) is seeking to enable a more transparent, predictable and consistent approach to environmental risk management of chemicals and plastics across all jurisdictions.

It has been proposed that a National Standard for environmental risk management of industrial chemicals be established under Commonwealth legislation with jurisdictional legislation used for implementation and compliance. The EHC Act and Regulation will be the primary legislation through which these national reforms will be implemented in New South Wales.

As well as reforming the EHC legislation, the EPA is required to comply with requirements of the *Subordinate Legislation Act 1989* with regard to the EHC Regulation. The existing EHC Regulation is due for staged repeal on 1 September 2017 in accordance with the Subordinate Legislation Act. The Act provides for the staged repeal of statutory rules, including Regulations, on their fifth anniversary.

The existing EHC Regulation was initially due for staged repeal in 2013, however, the repeal has been postponed on four occasions, each extending the operation of the Regulation for an additional one-year period. These postponements reflected the prevailing view that there was no merit in remaking the Regulation until the chemicals legislative reforms were finalised in New South Wales and the COAG chemicals and plastics regulation reforms were more fully developed.

Although the reforms are not yet fully finalised, the EPA has determined that Government action in the form of remaking the EHC Regulation is needed in order to:

- ensure its continued operation
- provide regulatory certainty for those industries operating in accordance with current regulatory requirements
- ensure a more equitable sharing of the costs associated with EHC licences and technology assessments particularly given that more than eight years have passed since they were last set
- protect the community and the environment from high risk environmentally hazardous chemicals.

Accordingly, the EPA has prepared this Regulatory Impact Statement (RIS). The RIS canvasses three options for achieving the above objectives: the base case where the Regulation is allowed to lapse; maintaining the status quo so that the Regulation is remade without amendment; or making the proposed Regulation.

1 Introduction

The Environmentally Hazardous Chemicals Regulation 2008 provides the administrative underpinning for the operation of the EHC Act. Given the extended timeframes for the finalisation of the chemicals legislative reforms, the EPA is proposing to remake the Regulation on 1 September 2017 with minor amendments to licensing fees and the fees associated with technology assessments. This is judged to be the most appropriate way to achieve the Government's objectives.

1.1 Purpose of the Regulatory Impact Statement

The RIS serves two purposes:

1. to meet the requirements of the *Subordinate Legislation Act 1989*
2. to demonstrate that the Better Regulation Principles as articulated in the *NSW Guide to Better Regulation* (October 2016) have been applied.

The Subordinate Legislation Act 1989

The *Subordinate Legislation Act 1989* provides for the staged repeal of statutory rules, including Regulations, every five years. Under the program of staged repeal, Regulations which are due for repeal may:

- be allowed to lapse
- be remade with major or minor amendments
- have their repeal postponed by one year if exceptional circumstances exist.

Permission was granted on several occasions to postpone the repeal of the existing Regulation until 1 September 2017. These postponements reflected the prevailing view that there was no merit in remaking the Regulation until the broader review of the EHC Act was more advanced and the COAG chemicals and plastics regulation reforms were more fully developed.

Although these reforms have not yet been finalised, the EPA proposes to remake the EHC Regulation now to ensure its continued operation and to provide the necessary regulatory certainty for those industries operating in accordance with current regulatory requirements.

Proposed amendments will focus on necessary fee adjustments. Regulatory changes arising from the more fundamental EHC legislative reforms will form a separate Regulation amendment to be proposed at a later date.

Before the EHC Regulation can be remade, the EPA is required to prepare a RIS to assess the economic, social and environmental costs and benefits of any replacement Regulation and its alternatives. This is designed to ensure that the proposed EHC Regulation provides the best approach for achieving its desired objective.

The RIS must provide justification for the proposed EHC Regulation by showing that it will result in the greatest net benefit or least net cost to the community compared with the alternatives. It must also conform to the NSW Government's 'better regulation principles'.

The RIS also provides the community with an opportunity to comment on the proposed Regulation before it becomes law.

Better regulation principles

The proposed EHC Regulation is judged not to be significant as it:

- is an administrative instrument that does not introduce a major regulatory initiative or impose a material restriction on competition
- does not impose a significant administrative cost to government

- will not have a significant impact on business or the community.

A Better Regulation Statement is therefore not required. The RIS must, however, apply the Better Regulation Principles as outlined in the *NSW Guide to Better Regulation* (October 2016) that characterise good regulation and the minimisation of red tape. The principles are:

1. the need for government action should be established
2. the objective of government action should be clear
3. the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
4. Government action should be effective and proportional
5. consultation with business and the community should inform regulatory development
6. the simplification, repeal, reform or consolidation of existing regulation should be considered
7. regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

This RIS has therefore been prepared in accordance with Schedule 2 of the *Subordinate Legislation Act 1989*.

1.2 Preliminary consultation

The EPA flagged a proposed change to technology assessment fees in a discussion paper on the review of the EHC legislation (*Proposed Reforms to Environmentally Hazardous Chemicals Legislation*). This was made available for public comment for a period of six weeks from 9 July 2015. The amendment proposed involved an escalating or tiered scale of fees.

Only three submissions commented on the proposed escalating or tiered fee structure. One supported the proposal; another was concerned about possible overlap with development application fees prescribed under Part 15 of the Environmental Planning and Assessment Regulation 2000 to facilitate the assessment of a proposal (no overlap exists); while the third submission provided partial support for the proposal, provided there was no annual indexation of fees.

The EPA has subsequently decided not to proceed with the proposal due to difficulties in establishing an equitable scale of fees given the diversity of technology assessments and the desire not to deter smaller businesses from investing in new treatment technologies that could benefit the environment and hence the community in the longer term.

1.3 Making a submission

The RIS and the proposed remade EHC Regulation (Appendix B) are now available for public comment for 28 days (four weeks). The EPA welcomes written submissions on them and these will be considered before the EHC Regulation 2017 is finalised.

Submissions can be forwarded:

By Mail to: Director Hazardous Materials, Chemicals & Radiation
The NSW Environment Protection Authority
PO BOX A290
Sydney South NSW 1232

By email to: chemicals.reform@epa.nsw.gov.au

The closing date for submissions is **5pm 7 July 2017**.

The RIS and the proposed remade EHC Regulation have been published on the NSW Government Have Your Say website and on the EPA consultation page.

A notice calling for submissions from the public has been published in the *NSW Government Gazette* and in major metropolitan newspapers.

Individuals, licensees, agencies and organisations with an identifiable interest in the proposed Regulation will be notified of the proposed amendments and public consultation period by email.

2 Roles and responsibilities for chemicals regulation and management

2.1 Roles and responsibilities

Commonwealth, states, territories and local government authorities all have responsibilities in relation to chemicals regulation and management.

At the Commonwealth level, chemicals are assessed and registered or listed under separate regulatory schemes according to their end use – industrial, agricultural and veterinary, therapeutic (pharmaceuticals and medicines) or food related. The following agencies have been established to administer the separate national regulatory schemes:

- National Industrial Chemicals Notification and Assessment Scheme (NICNAS) – industrial chemicals
- Australian Pesticides and Veterinary Medicines Authority (APVMA) – agricultural and veterinary ('agvet') chemicals
- Therapeutic Goods Administration (TGA) – therapeutic goods
- Food Standards Australia and New Zealand (FSANZ) – chemicals in food and food additives.

These agencies are responsible for the assessment of chemicals prior to their manufacture, importation or use in Australia.

There are also national frameworks for managing chemical risks in transport and workplaces, setting residue standards in food produce, limiting access to certain poisons, and managing aspects of environmental quality and monitoring.

The states and territories enforce conditions of use set by assessment agencies. Such conditions generally cover the transport, storage, use, reuse and ultimate disposal of a chemical.

Local government has a role in implementing some state and territory Regulations relating to chemicals – in particular, those concerned with small to medium firms and aspects of waste disposal.

2.2 NSW chemicals management legislation

In New South Wales the following legislative instruments are used to control activities associated with the use and disposal of chemicals:

- ***Environmentally Hazardous Chemicals Act 1985*** – provides a specialised framework for placing controls on particular environmentally hazardous chemicals or chemical wastes throughout their entire life cycle, thereby minimising potential environmental impacts.
- ***Protection of the Environment Operations Act 1997*** (POEO Act) – the principal piece of environmental protection legislation regulating air, water, land and noise pollution as well as waste management in New South Wales. The POEO Act deals with chemical emissions to air, discharges to water and land. It provides a regulatory regime for chemical pollution and waste management, and specifies licensing requirements for activities including hazardous waste generation, storage and transport. The licences tend to be focused on controlling the more significant localised, cumulative and acute impacts of 'end of pipe' industrial pollution (including chemical pollution) rather than regulating a chemical through its entire life cycle.
- ***Pesticides Act 1999*** – regulates and controls the use of pesticides in New South Wales after the point of sale. This includes pesticide use in agriculture, on public lands and at domestic and commercial premises. The Pesticides Act requires the users of registered

pesticides to strictly follow the approved label or permit directions and to do no harm through their use of pesticides.

- ***Contaminated Land Management Act 1997*** (CLM Act) – establishes a legal framework which enables the regulation of sites that are contaminated with chemical wastes that pose, or are likely to pose, a significant risk of harm to human health and/or the environment. It is therefore concerned with the management of legacy pollution from past activities such as heavy industry or chemically intensive agriculture.
- **Protection of the Environment Operations (Clean Air) Regulation 2010** – provides regulatory measures to control chemical air emissions from wood heaters, open burning, motor vehicles and fuels and industry.
- **Protection of the Environment Operations (Waste) Regulation 2014** – manages waste storage and transportation as well as sets reporting and record keeping requirements for waste facilities. The regulation has special requirements for asbestos which includes a special waste monitoring requirement. It also prohibits the application of specified residue wastes to land for re-use in growing vegetation.
- ***Radiation Control Act 1990*** **and the Radiation Control Regulation 2013** – for regulating and controlling radioactive substances, ionising radiation apparatus, non-ionising radiation apparatus of a kind prescribed by the Regulations and sealed source devices. The Radiation Control Act does not apply to radioactive ore while it is being mined or treated.
- ***Dangerous Goods (Road and Rail Transport) Act 2008*** – appoints the EPA and SafeWork NSW as competent authorities to regulate the transport of dangerous goods (other than explosives and radioactive substances) by road and rail as part of a national scheme. The transport of dangerous goods involves the loading, consigning, marking and placarding of goods, and driving of vehicles.
- ***Waste Avoidance and Resource Recovery Act 2001*** – promotes waste avoidance and resource recovery to achieve a continual reduction in waste generation.

2.3 Environmentally Hazardous Chemicals Act

The *Environmentally Hazardous Chemicals Act 1985* (EHC Act) is the State's key legislation for managing hazardous chemicals. It provides a flexible legal framework for the assessment and management of environmentally hazardous chemicals and declared chemical wastes in New South Wales. The framework is capable of regulating priority/high-risk chemicals throughout their entire life cycles.

The main provisions of the EHC Act relate to:

- a statutory chemical assessment function
- the regulation and control of chemicals via Chemical Control Orders (CCOs) and licences
- the establishment of a statutory advisory group, the Hazardous Chemicals Advisory Committee.

Chemical assessments

The EPA may undertake chemical assessments in accordance with a formal process established under the EHC Act.

Historically, chemical assessments were undertaken by the State Pollution Control Commission and the EPA prior to the establishment of National Industrial Chemicals Notification and Assessment Scheme (NICNAS) in 1990. The assessments sought to determine if any statutory controls should be introduced in relation to a 'declared chemical waste' or an environmentally hazardous chemical. Assessments were also conducted by the EPA when making a CCO that was not in response to a national management plan; for example, the CCO on aluminium smelter waste which came into force in 1986.

Following the establishment of NICNAS, it was mutually agreed that the chemical assessment provisions in the EHC Act would not be used by the EPA in a broad assessment program. Instead, NICNAS recommendations arising from a chemical assessment may be adopted by New South Wales under the EHC Act or the *Protection of the Environment Operations Act 1997* (POEO Act) when appropriate.

Chemical Control Orders

A Chemical Control Order (CCO) is the primary regulatory instrument under the EHC Act. It is a flexible tool that can impose management restrictions/controls on a specific chemical, or a class of chemicals, through general requirements and by requiring that certain things be subject to particular licence conditions.

A CCO allows for the control of a chemical throughout the chemical's life cycle. It can set requirements for a broad range of activities, including the manufacture, processing, distribution, use, sale, transportation, storage and disposal of chemicals and chemical wastes for industrial, commercial and household purposes. It can also be used to require the phasing-out of a particular chemical, usually in accordance with a national management plan.

CCOs may be made when chemicals or chemical wastes have been assessed as posing serious threats to the environment and there are particular challenges in their management. In these circumstances, a CCO provides additional controls beyond those approaches (e.g. discharge limits in licences or labelling requirements) generally used for chemicals. Consequently, CCOs are usually made where controls on chemicals are required beyond those set under pollution laws which focus on major point source emissions from industry.

CCOs may place restrictions on activities related to a chemical that apply across New South Wales or in specified regions.

Failure to comply with the requirements of a CCO or related licence is an offence under the EHC Act.

Currently, there are five CCOs in force in New South Wales covering:

- polychlorinated biphenyl (PCB) wastes and materials
- certain organochlorine pesticides and industrial waste by-products also known as scheduled chemical wastes; for example, Dichlorodiphenyltrichloroethane (DDT), Hexachlorobenzene (HCB)
- dioxin contaminated waste materials
- organotin waste materials
- aluminium smelter waste containing fluoride and/or cyanide.

EHC Act licences

EHC Act licences are only issued to persons who are required by a CCO to hold a licence. Consequently, the primary driver for licensing is a concern about the chemical involved that requires specific actions to be undertaken. An EHC Act licence can selectively address an activity of concern, cover any or all CCOs, cover any or all activities regulated under such an order, and cover multiple premises.

There are currently 21 licences in force under the EHC Act. These licences vary in scope and complexity; for example, a number include conditions focused on the storage of waste, whilst a few include more substantive controls and conditions relating to large and complex projects that involve the processing of environmentally hazardous chemicals (in line with the outcome of technology assessments). All have been triggered by a CCO that sets down the requirement for licensing for that specific activity.

The Hazardous Chemicals Advisory Committee

The Hazardous Chemicals Advisory Committee (HCAC) was established under Part 2 of the EHC Act to:

- facilitate the coordination of administrative and enforcement activities relating to the control of chemicals
- advise the EPA on chemical assessments and controls required for chemicals identified to be environmentally hazardous
- advise on priorities to be adopted when investigating chemicals
- investigate and report on chemical contamination incidents
- carry out research on chemicals or any matter relating to legislation (whether State or other legislation) concerning the control of chemicals.

Members are drawn from industry, the private sector, community and other government agencies.

The last formal meeting of the HCAC was held in late 2003.

2.4 Environmentally Hazardous Chemicals Regulation 2008

The EHC Regulation is a short instrument containing administrative provisions relating to the operation of the EHC Act. It provides for:

- committee operations – the appointment of alternate members to the Hazardous Chemicals Advisory Committee
- fee setting - the setting of fees for EHC Act licences (applications, renewals and transfers) to undertake prescribed activities in relation to environmentally hazardous chemicals and for technology assessments undertaken by the EPA
- information to be provided in an application for an assessment of a prohibited activity; notices issued by the EPA regarding its intention to assess a chemical or in relation to licence applications; registers under the Act
- other administrative matters relating to time for lodging appeals under the EHC Act and property seizures.

Technology assessments

Australia is a signatory to the Stockholm Convention on Persistent Organic Pollutants (POPs), and as such is bound to take particular care with activities involving POPs, including PCBs, certain organochlorine compounds (for example DDT) and dioxins. This Convention is implemented in Australia by the National Strategy for the Management of Scheduled Wastes which is given effect in New South Wales through CCOs issued under section 22 of the EHC Act.

Technologies for treating or destroying those chemicals listed under the National Strategy are assessed in accordance with the National Protocols for Approval/Licensing of Trials of Technologies for the Treatment/Disposal of Schedule X Wastes 1994 and/or the National Protocol for Approval/Licensing of Commercial- Scale Facilities for the Treatment/Disposal of Schedule X Wastes 1994. These protocols were developed as part of the National Strategy for the Management of Scheduled Waste.

A technology assessment is generally carried out as part of a licensing process for specific premises or a mobile treatment plant. Approval of the use of a treatment technology always requires the specific characteristics of the site and the declared chemical waste to be evaluated by the EPA.

3 Legislative reforms

3.1 Reforms at the state level

Since the EHC Act commenced in 1985, the management of industrial chemicals in New South Wales has evolved significantly to deal with specific aspects of chemicals regulation such as emergency response, waste management and contaminated land. Sophisticated environment protection licensing in relation to industrial activities has also been introduced. In addition, the division of chemical assessment and regulatory roles and responsibilities between state and federal governments have changed. Specific examples include:

- The establishment of a comprehensive framework for regulating contaminated sites under the *Contaminated Land Management Act 1997* (CLM Act). Contaminated land was previously managed under the EHC Act.
- The establishment of National Industrial Chemicals Notification and Assessment Scheme (NICNAS) in 1990. Prior to this, chemical assessments were carried out in each state/territory and in NSW this was through the EHC Act.
- The enactment of the *Protection of the Environment Operations Act 1997* (POEO Act) which consolidated the regulation of air, water, noise and land pollution and waste management. It therefore covers chemical emissions to air, discharges to water and waste management from scheduled industrial premises.

While corresponding amendments to the EHC legislation were made at the time of these changes, there has not been a fundamental review of the EHC legislation and aspects of the legislation have become outdated.

Further, new and emerging hazardous chemical issues have highlighted the need for modern chemical legislation that is able to respond to such issues.

In 2015 the EPA commenced a fundamental review of the EHC legislation to modernise and streamline the operation of the Act, and to remove any duplication with other environmental legislation such as the POEO Act and the CLM Act, which were established following the commencement of the EHC Act.

The EPA is currently finalising the legislative proposals following two rounds of consultation with the public and key stakeholders.

3.2 National reforms

The Productivity Commission Report into Chemicals and Plastics Regulation identified a substantial gap in the national environmental assessment of industrial chemicals. In particular, it found that there was no framework to articulate the environmental issues to be considered in assessing and managing potential risks from exposures to industrial chemicals, and the kind of risk management outcomes that would be expected by regulators.

The gap creates a cycle in which jurisdictions cannot respond rapidly and consistently to assessments. Further, chemical assessments are not framed to enable a consistent response by jurisdictions. As a result, each jurisdiction implements risk management recommendations for the environment in different ways.

The Productivity Commission recommended to the Council of Australian Governments (COAG) that a new national environmental risk management standards body be established to make decisions on the management of environmental risks posed by industrial chemicals.

Environment Ministers from the Commonwealth and all states and territories met in July 2015 and agreed to establish a National Standard for the environmental risk management of industrial chemicals. The National Standard will streamline regulation of industrial chemicals,

enabling a more consistent, efficient and effective approach to environmental risk management of industrial chemicals across all jurisdictions.

The Standard will be established by the Commonwealth and implemented by each state and territory. This will therefore require NSW to put in place a mechanism whereby these risk management decisions can be automatically adopted into legislation by reference to a national register of decisions. The EHC Act and regulation will provide the legislative framework for this to occur in NSW.

The design and operation of the National Standard is currently being finalised. Further information on the development of the National Chemicals Standard is available on the Department of Environment and Energy website.

4 Objectives of the review

The EHC Act confers many functions upon the Government, such as assessments of chemicals and prohibited activities and decisions about licence applications. A review of the current EHC Regulation has identified that the main issues that need to be addressed are:

1. whether the resource costs associated with technology assessments are reasonably shared between industry and the government
2. whether current licensing fees adequately reflect the value of time taken to administer licences
3. the need to ensure regulatory certainty for those industries operating in accordance with current regulatory requirements
4. protecting the environment and human health from environmentally hazardous chemicals.

5 The alternative options considered

Three options have been identified for achieving the objectives of the review. They are outlined as follows:

5.1 Option 1: The base case - allow the EHC Regulation to lapse

This approach would mean that no new Regulation is made when the Regulation is repealed. This option would reduce the effectiveness of the EHC Act. In particular, it would:

- Remove current time limits on when the EPA must hand down a decision and when appeals must be lodged.
- Prevent the appointment of alternate members to the HCAC.
- Reduce transparency regarding the information that is to be included in the registers under the EHC Act.
- Remove requirements that mandate *consistent* reporting of information by the EPA when:
    - gazetting a notice for the assessment of a chemical (for example details of the chemical, information relating to making public submissions and location of relevant data for public inspection)
    - publishing licences in the NSW Government Gazette (for example name of applicant and address of premises, description of the chemical, details of any Chemical Control Orders (CCO), and details of the activities being applied for)
    - retaining a register of scheduled chemicals waste, records of CCOs and registers of licences.
- Remove requirements that mandate the consistent provision of information by applicants needed by the EPA for:
    - an assessment of a prohibited activity (for example the name, description or formula of the chemical and data relating to toxicological tests and chemical wastes)
    - approving activities in relation to a chemical which is the subject of a CCO
    - transferring a licence to another party.
- It would also remove the ability of the EPA to recover costs for:
    - The administration and implementation of the EHC Act licensing system.
    - Conducting technology assessments which are generally carried out as part of a licensing process for specific premises or a mobile treatment plant. A ‘no EHC Regulation’ option would require the State to bear the cost of conducting technology assessments, since these would still be required by the PCB and the Scheduled Chemical Wastes CCOs under the EHC Act or by a condition in an EHC licence.

5.2 Option 2: Remake the existing Regulation without change

This option consists of renewing the current EHC Regulation without making any changes. This would continue all provisions and ensure that all sections of the EHC Act would remain operative. There would be no changes to fees and accordingly the existing fees (as at 1 January 2012) would apply for:

- Administration and implementation of the EHC Act licensing system
    - application under section 13 (1) of Act - $1680
    - application for a new licence made under section 28 (1) of Act on or after 1 January 2012 – $1140
    - application to renew a licence made under section 28 (1) of Act on or after 1 January 2012 $710

  - fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2012 – $570
  - application to transfer a licence made under section 29A of Act on or after 1 January 2012 – $130.
- Conducting technology assessments – $8400 for assessments commenced on or after 1 January 2012.

5.3 Option 3: Remake the existing Regulation with proposed amendments

This option consists of a new EHC Regulation that continues the provisions in the current Regulation and updates fees to reflect changed administration costs since 1 January 2012. It also introduces a new application fee for technology assessments.

The following fees would apply:

- Administration and implementation of the EHC Act licensing system
  - application under section 13 (1) of Act – $1935
  - application for a new licence made under section 28 (1) of Act on or after 1 September 2017 and on or before 31 December 2017 – $1315, increasing to $1460 for applications made on or after 1 January 2022
  - application to renew a licence made under section 28 (1) of Act on or after 1 September 2017 and on or before 31 December 2017– $820, increasing to $910 for applications made on or after 1 January 2022
  - fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 September 2017 and on or before 31 December 2017 – $655, increasing to $730 if the grant or renewal is made on or after 1 January 2022
  - application to transfer a licence made under section 29A of Act on or after 1 September 2017 and on or before 31 December 2017 – $150, increasing to $165 if the transfer is made on or after 1 January 2022.
- Conducting technology assessments comprising
  - an application fee of $1200 if the application is made on or after 1 September 2017 and on or before 31 December 2017, increasing to $1335 if the application is made on or after 1 January 2022
  - an assessment fee not exceeding $9680 if the assessment is commenced on or after 1 September 2017 and on or before 31 December 2017, increasing to $10,755 if the assessment is commenced on or after 1 January 2022.

Fees payable under each option

Table 1 compares the fees under each option.

Table 1 Comparison of fees

	No Regulation	Existing Regulation	New Regulation	
			1 September to 31 December 2017	After 1 January 2022
1. Administration and implementation of the EHC Act licensing system				
Application under section 13 (1) of Act	$0	$1,680	$1,935	
Application for a new licence made under section 28 (1) of Act	$0	$1,140	$1,315	$1,460
Application to renew a licence made under section 28 (1) of Act	$0	$710	$820	$910
Fee for each year for which a licence is granted or renewed	$0	$570	$655	$730
Application to transfer a licence made under section 29A of Act	$0	$130	$150	$165
2. Conducting technology assessments				
Licence application fee	$0	$0	$1,200	$1,335
Technology assessment	$0	$8,400	$9,680	$10,755

5.4 Other possible options

Non-regulatory approaches such as self-regulation are not considered appropriate as they do not achieve all of the objectives of the review. Further, as the EHC Regulation is administrative in nature, non-regulatory approaches are not appropriate.

6 The proposed EHC Regulation

The objective of the proposed EHC Regulation is to ensure the continued efficiency and effectiveness of the EHC Act. The proposed EHC Regulation will do this by repealing and remaking the existing EHC Regulation with updated fees and the introduction of an application fee for technology assessment applications.

6.1 Updated EHC licence fees

It is proposed that licensing fees for an EHC licence be amended in line with increased administration costs given that they have not been reviewed since the 2008 Regulation was introduced. Further, that they be indexed to represent full cost recover since 1 January 2012.

The proposed fees will allow the EPA to appropriately recover costs and ensure the continuation of the protection of the environment and human health provided by licensing activities. The new fee rates will be aligned with increases in the value of time taken to administer EHC licences since 2012. The rate of increase is in line with wages growth under the NSW Public Sector Wages Policy 2011 of no more than 2.5% each year. The proposed fees are shown in Table 2.

Table 2: Proposed licence application fees

Matter for which fee is payable	Fee $
Application under section 13 (1) of Act	1,935
Application for a new licence made under section 28 (1) of Act on or after 1 September 2017 and on or before 31 December 2017	1,315
Application for a new licence made under section 28 (1) of Act on or after 1 January 2018 and on or before 31 December 2018	1,320
Application for a new licence made under section 28 (1) of Act on or after 1 January 2019 and on or before 31 December 2019	1,355
Application for a new licence made under section 28 (1) of Act on or after 1 January 2020 and on or before 31 December 2020	1,390
Application for a new licence made under section 28 (1) of Act on or after 1 January 2021 and on or before 31 December 2021	1,425
Application for a new licence made under section 28 (1) of Act on or after 1 January 2022	1,460
Application to renew a licence made under section 28 (1) of Act on or after 1 September 2017 and on or before 31 December 2017	820
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2018 and on or before 31 December 2018	825
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2019 and on or before 31 December 2019	845
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2020 and on or before 31 December 2020	865
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2021 and on or before 31 December 2021	885
Application to renew a licence made under section 28 (1) of Act on or after 1 January 2022	910
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 September 2017 and on or before 31 December 2017	655

Matter for which fee is payable	Fee $
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2018 and on or before 31 December 2018	660
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2019 and on or before 31 December 2019	680
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2020 and on or before 31 December 2020	695
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2021 and on or before 31 December 2021	715
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2022	730
Application to transfer a licence made under section 29A of Act on or after 1 September 2017 and on or before 31 December 2017	150
Application to transfer a licence made under section 29A of Act on or after 1 January 2018 and on or before 31 December 2018	152
Application to transfer a licence made under section 29A of Act on or after 1 January 2019 and on or before 31 December 2019	155
Application to transfer a licence made under section 29A of Act on or after 1 January 2020 and on or before 31 December 2020	158
Application to transfer a licence made under section 29A of Act on or after 1 January 2021 and on or before 31 December 2021	160
Application to transfer a licence made under section 29A of Act on or after 1 January 2022	165

6.2 Updated application fees for technology assessments

As previously noted, a technology assessment is generally carried out as part of a licensing process for specific premises or a mobile treatment plant relating to a chemical process or declared chemical waste.

The Regulation allows a person to request the EPA to carry out an assessment of any technology that the person proposes to use in relation to processing a chemical, or a declared chemical waste, that is the subject of a Chemical Control Order (CCO).

In the past the EPA has, on occasion, committed a considerable amount of resources to assess proposed treatment technology that was subsequently found not to be viable. This proved costly not only to the EPA but to the applicant.

In an attempt to prevent the reoccurrence of similar situations, it is proposed to introduce an application fee that the applicant must pay when they lodge their technology assessment application. This will cover the cost of the EPA making an initial assessment of the proposal.

The proposed application fees are:

- on or after 1 September 2017 and on or before 31 December 2017 – $1200
- on or after 1 January 2018 and on or before 31 December 2018 – $1210
- on or after 1 January 2019 and on or before 31 December 2019 – $1240
- on or after 1 January 2020 and on or before 31 December 2020 – $1270
- on or after 1 January 2021 and on or before 31 December 2021 – $1300
- on or after 1 January 2022 – $1335.

If the EPA determines that the application should proceed to a full assessment, then a further fee may be charged to carry out an assessment of the technology against the requirements of the *National Protocol – approval / licensing of commercial-scale facilities for*

the treatment/disposal of schedule X wastes, or the *National Protocol – approval / licensing of trials of technologies for the treatment/disposal of schedule X wastes* or both. The fee will not represent full cost recovery as such assessments vary considerably in scope and cost. Further, the EPA does not want such fees to act as a deterrent.

These fees are not to exceed:

- $9680 — for assessments commenced on or after 1 September 2017 and on or before 31 December 2017
- $9740 — for assessments commenced on or after 1 January 2018 and on or before 31 December 2018
- $9985 — for assessments commenced on or after 1 January 2019 and on or before 31 December 2019
- $10,235 — for assessments commenced on or after 1 January 2020 and on or before 31 December 2020
- $10,490— for assessments commenced on or after 1 January 2021 and on or before 31 December 2021
- $10,755— for assessments commenced on or after 1 January 2022.

Index fees in the interim years between remakes

As occurred when the regulation was last remade, the preferred option utilises indexation of fees in the interim years, between remakes of the EHC Regulation. This will ensure that any adjustment of fees in future EHC Regulation reviews will be minimal (provided the remake is not postponed).

The index is based on projected wage costs to the EPA expected over the next five years in accordance with the NSW Public Sector Wages Policy 2011.

7 Costs and Benefits

7.1 Identification of incremental costs and benefits

Relative to the base case, remaking the existing Regulation (Option 2) or making the proposed Regulation (Option 3) would have the same incremental costs and benefit categories, identified in Table 3.

Table 3 Identification of incremental costs and benefits of remaking the existing Regulation (Option2) and the proposed Regulation (Option3), relative to the base case

Stakeholder	Costs	Benefits
Industry	*Additional licence fees *Additional technology assessment fees	Reduced administration costs – time savings
EPA		*Additional licence fees *Additional technology assessment fees Reduced administration costs – time savings
Community	N/A	N/A

* These costs and benefit net to zero and hence to not represent a resource costs to NSW.

7.2 Administrative provisions

With or without a Regulation, the EPA would be responsible for the administration of the EHC Act, with provisions requiring the relevant industry to obtain and renew licences for the handling of environmentally hazardous chemicals. However, under the base case there would be uncertainty around the type and form of information reported to the EPA, in relation to licence applications, renewals, technology assessments and applications for licence transfers, giving rise to small additional information costs to industry. In addition, there would be inefficiencies in relation to the functioning of the HCAC and in EPA officers processing information that is presented to them in an inconsistent format.

With a regulation, the uncertainty to industry and inefficiencies to the EPA would reduce, resulting in administrative cost savings to both industry and the EPA. These administrative cost savings would be real but relatively minor and remain unquantified in this analysis.

7.3 Licensing and technology assessment fees

As identified above, licensing and technology assessments would occur under the EHC Act, with or without a Regulation. However, with a Regulation, part or all of the costs of licence administration/regulation and technology assessments would be paid for by industry. There would be additional licence and technology assessment fees for industry, and receipts of fees by the EPA. However, the introduction of fees under a Regulation relates to a change in who bears the costs of licence administration and technology assessments, and does not change the overall costs to society of licence administration and technology assessments[1].

The amount levied on industry and received by the EPA would vary between a remake of the Regulation (Option 2) and the proposed Regulation (Option 3). Cost recovery is discussed further at 7.5.

[1] This assumes minimal transaction costs in the administration of fees.

7.4 Distribution of costs and benefits

The ultimate incidence of regulation costs and savings does not depend on who initially pays the cost or receives the benefit but on the price elasticity of demand and the price elasticity of supply.

For impacts that initially fall on producers in a competitive market e.g. those involved in the handling of environmentally hazardous chemicals, inelastic supply and elastic demand will result in regulatory costs (or savings) falling on producers, whereas in a situation where there is elastic supply and inelastic demand regulatory costs (or savings) fall mainly on consumers through price increases (decreases). Most markets fall between these two extremes and so the incidence of regulatory costs (or savings) is shared between producers and consumers. Industry administrative cost (or savings) as a result of a Regulation will therefore be shared between producers and consumers. Consumers of the services provided by those requiring licences and technology assessments may be households or other producers.

Councils and state government agencies are not profit making entities whose production and price is determined in a competitive market. They rely on funding from rate payers and tax payers respectively to fund their activities. Hence, reduced costs on these entities e.g. from receipt of licence fees and technology assessment fees, will benefit the payers of those rates and taxes.

7.5 Cost recovery

The primary implication of the EHC Regulation relates to cost recovery by the EPA of licensing and technology assessments undertaken under the EHC Act.

Licensing

Under the base case, the Regulation would be repealed and all costs of licence administration by the EPA would be borne by the EPA, and hence the taxpayer.

However, it is generally considered that government entities should set charges to recover the full cost of providing regulatory activities, such as licensing.

Under a remake of the existing Regulation (Option 2), the costs that could be recovered for licensing would remain at the levels that in 2012 were considered to represent full cost recovery. Under this option, processing costs from 2017 onwards, would be partly borne by the EPA and hence the taxpayer since prescribed fees have not kept pace with wages growth in the public sector.

Under the proposed Regulation (Option 3), licence costs would be adjusted to represent full cost recovery over the life of the Regulation. Licence administration costs to the EPA are a function of both the time taken to process applications and the value of time. If the process of licence administration, and hence time taken, has significantly changed since the previous regulation, then there would be an argument to revisit time allocations for licence administration.

Time allocation has, however, remained unchanged as the process has largely remained the same. However, while the time taken to process applications has not changed significantly since 2012, the value of time has increased, with wages growth under the NSW Public Sector Wages Policy 2011 being around 2.5% each year. Consequently, under the proposed Regulation, the cost of licence administration prescribed in the previous Regulation for 1 January 2012, would be inflated by 2.5% each year.

This will result in all the costs of licence administration being initially borne by industry, with some of these costs then passed on to consumers in the industry that handles these high risk chemicals. Such costs will not be subsidised by the wider NSW community.

Technology Assessments

Under the base case, the Regulation would be repealed and all costs of technology assessments by the EPA would be borne by the EPA and hence the taxpayer.

Under a remake of the existing Regulation (Option 2), the costs that could be recovered for technology assessments would remain at the levels that on 1 January 2012 were considered to represent full cost recovery i.e. up to $8400.

With this option, technology assessment costs from 2017 onwards, would be partly borne by the EPA, and hence the taxpayer, since prescribed fees have not kept pace with both the time and wages costs of undertaking these assessments.

The resource costs associated with technology assessments can vary significantly from application to application. A case study assessment by the EPA indicates total costs of between $210,000 and $320,000 for a particular technology assessment.

Full recovery of these assessment costs by the EPA may be prohibitive for industry and could deter the uptake of new technologies for treating and destroying waste that have benefits which extend beyond those to industry, since stockpiling and export of waste pose risks to human health and the environment.

Consequently, some sharing of the cost between industry and the government (as representatives of the beneficiary i.e. tax payers) is reasonable. However, diversity of technology assessments makes it difficult to formularise assessment fees and the sharing between industry and government.

The proposed Regulation (Option 3) recognises that technology assessments tend to comprise:

- an initial vetting process, which is reasonably consistent in terms of time requirements for the EPA, to determine whether an application should proceed to a full assessment
- a full assessment that can vary considerably in scope and cost.

Under the proposed Regulation, the EPA is proposing:

- full cost recovery of the initial vetting process via an application fee (indexed over the Regulation life in accordance with anticipated wages growth)
- for applications that proceed to a full assessment, partial recovery of full costs via wage growth indexation (at 2.5% each year) of the charges that applied in the previous Regulation.

This approach is judged to provide the most reasonable sharing of costs as well as provide an optimal level of benefits to industry, the community, and ultimately the environment.

8 Conclusion

The EHC Act is the State's key chemicals management law. It provides a flexible legal framework for the assessment and management of environmentally hazardous chemicals and declared chemical wastes in NSW.

The current EHC Regulation (Option 2) supports the regulation, control and assessment of environmentally hazardous chemicals. The EHC Regulation does this by prescribing fees for licensing activities and technology assessments.

The collection of these fees ensures that the Government has the resources to adequately regulate environmentally hazardous chemicals and can properly assess proposed technologies for treating or destroying such chemicals.

Without the EHC Regulation not only would the Government (and NSW taxpayers) be fully subsidising industry's activities, but it may not be in a position to ensure that high risk chemicals are properly treated or destroyed. Not only could this jeopardise the implementation of international obligations, but the Government may be held liable by future generations for not ensuring the proper treatment of high risk chemicals, thereby unnecessarily exposing the community and the environment to the dangers they present.

The lack of a regulation would also produce uncertainty for both industry and the EPA in terms of the requirements they must follow.

Although the proposed EHC Regulation (Option 3) would result in the same incremental cost and benefit categories as the current EHC Regulation, Option 3 would result in the lowest net cost to the EPA (and the NSW taxpayers) with regards to licence administration. Industry would pay a greater proportion of the costs compared to Option 2 but not the full cost and is likely to pass some of these costs on to consumers in the industry that handle these chemicals.

Option 3 therefore presents a more equitable distribution of costs away from the wider community.

With regard to technology assessments, Option 3 provides the most equitable sharing of costs between industry and the EPA as compared to the other options. The initial vetting fee combined with a partial cost recovery approach for the costs of a full assessment will ensure that industry shares the responsibility for the cost of regulating chemicals that they are potentially profiting from.

Option 1 (no EHC Regulation) would not achieve the objective of supporting the regulation, control and assessment of environmentally hazardous chemicals. It would also result in the foregoing of potential benefits from the EHC Act.

Option 2 would achieve the objective and help achieve the potential benefits of the EHC Act but would not necessarily ensure the best sharing of costs.

Option 3 would achieve the objective, the potential benefits of the EHC Act, and also benefits from appropriate cost sharing. This will, in turn, provide greater benefits to the community, particularly as it ensures that the costs of administering the EHC legislation is not subsidised by the wider NSW community.

The proposed EHC Regulation (Option 3) is the preferred option for replacing the current EHC Regulation when it is repealed on 1 September 2017.

9 References

Boardman A, Greenberg D, Vining A and Weimer D 2001, *Cost-Benefit Analysis: Concepts and Practice*, Prentice Hall, USA.

NSW Public Sector Wages Policy 2011
www.treasury.nsw.gov.au/__data/assets/pdf_file/0013/124501/NSWTC_14-18_NSW_Public_Sector_Wages_Policy_2011.pdf

Appendix A

Methodology

The method used in this study to evaluate intervention options is Cost Benefit Analysis (CBA). The aim of CBA is to compare the incremental costs and benefits of different options and identify the option that provides the greatest net benefit.

The key steps in CBA are summarised in Box 1.

Box 1: Key steps in a CBA

Step 1: Establish the base case against which to assess the potential economic, social and environmental impacts of changes due to the project.
Step 2: Define the project/policy including all significant inputs required to achieve the project's objectives.
Step 3: Quantify the changes from the base case resulting from the project/policy. This will focus on the incremental changes to a range of factors (for example, environmental, economic, social) resulting from the project.
Step 4: Estimate the monetary value of these changes and aggregate these values in a consistent manner to assess the outcomes. Where market prices exist, they are a starting point for valuations of both outputs and of inputs used for production. For non-market goods, as for many environmental impacts and some social impacts, the aim is to value them as they would be valued in monetary terms by the individuals who experience them.
Step 5: Estimate the Net Present Value (NPV) of the project's future net benefits, using an appropriate discount rate.
Step 6: Undertake sensitivity analysis on the key range of variables, particularly given the uncertainties related to specific benefits and costs.
Step 7: Assess the distribution of costs and benefits across different groups.
Step 8: Report CBA results, including all major unquantified impacts so the appraisal addresses and incorporates all material relevant to the decision maker.

Source: NSW Government (2015)

Economic life of the analysis

The analysis was undertaken for a five-year period. This is consistent with life of regulations under the Subordinate Legislation Act. It is, however, less than the NSW Treasury recommended analysis period of 20 years.

Discounting

The costs and benefits that are able to be quantified are discounted at the NSW Treasury recommended discount rate of 7%.

Sensitivity testing

Sensitivity testing was undertaking by identifying the main drivers to the analysis and the implication of changes to the assumed values for these drivers. In accordance with NSW Treasury Guidelines sensitivity testing is also undertaken at discount rates of 4% and 10%.

Incremental analysis

CBA is concerned with the incremental effects of a proposal relative to the base case or 'without' proposal scenario. Consequently, while some costs and benefits are able to be defined for the base case, it is not possible to establish the net present value of the base case, as such. It is only possible to identify the net present value of options relative to the base case. If the net present value of an option, relative to the base case, is negative then the base case would be preferred on economic efficiency grounds.

Standing

CBA includes the consideration of costs and benefits to all members of society i.e. consumers, producers and the broader society as represented by the government.

The most inclusive definition of society includes all people, no matter where they live or to which government they owe allegiance to (Boardman et al. 2001). However, in practice most analysts define society at the national level based on the notion that the citizens of a country share a common constitution that sets out fundamental values and rules for making collective choices and that the citizens of other countries have their own constitutions that make them distinct societies (Boardman et al. 2001).

NSW regulations tend to impose costs to NSW entities and have benefits for the society of NSW, so the CBA analysis of the proposed EHC Regulation has a NSW focus. Where costs and benefits spill over into other States this will be identified.

Appendix B

Proposed Environmentally Hazardous Chemicals Regulation 2017

New South Wales

Environmentally Hazardous Chemicals Regulation 2017

under the

Environmentally Hazardous Chemicals Act 1985

[*The following enacting formula will be included if the Regulation is made:*]

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmentally Hazardous Chemicals Act 1985*.

Minister for the Environment

Explanatory note

The object of this Regulation is to remake, with some amendments, the *Environmentally Hazardous Chemicals Regulation 2008* which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation increases a number of fees payable under the *Environmentally Hazardous Chemicals Act 1985* (***the Act***).

This Regulation also makes provision with respect to the following:

(a) the matters to be included in certain applications and notices made or issued under the Act,

(b) the time within which appeals under the Act may be made,

(c) the form of a receipt for property seized by authorised officers and the manner of advertising the proposed forfeiture of seized property,

(d) the information to be included in registers under the Act,

(e) the appointment of alternate members of the Hazardous Chemicals Advisory Committee,

(f) the payment of fees,

(g) savings and formal matters.

This Regulation is made under the *Environmentally Hazardous Chemicals Act 1985*, including sections 13 (2) and (3), 19 (2), 28 (1) (b) and (3) (a), 29A (2) (b) and (4) (a), 37 (1), 38 (1), 39 (1), 45 (3), 48 (3) (b), 52 (2) and 58 (the general regulation-making power) and clause 4 of Schedule 1.

Contents

Environmentally Hazardous Chemicals Regulation 2017

under the

Environmentally Hazardous Chemicals Act 1985

1 Name of Regulation

This Regulation is the *Environmentally Hazardous Chemicals Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Environmentally Hazardous Chemicals Regulation 2008* which is repealed on 1 September 2017 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Environmentally Hazardous Chemicals Act 1985*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Application for assessment of prohibited activities

For the purposes of section 13 (3) of the Act, the prescribed kinds of data relating to a prescribed activity to be restricted are as follows:

(a) a name, description or formula of a chemical in relation to which the prescribed activity is proposed to be carried on, or any other information which would reveal its chemical identity,

(b) any physical or chemical data which would reveal the chemical identity of a chemical referred to in paragraph (a),

(c) data from toxicological and ecotoxicological tests, but not the results of any such tests,

(d) genuine manufacturing or other industrial or commercial secrets,

(e) data which are the same as, or virtually the same as, or which include, data whose disclosure has been restricted in accordance with the Act or any Act of the Commonwealth or of a State or a Territory relating to chemicals or chemical wastes.

5 Assessment of chemicals

(1) For the purposes of section 19 (2) of the Act, the prescribed particulars to be contained in a notice of intention to assess a chemical are as follows:

(a) the chemical name or identity of the chemical,

(b) the name and address of the person with whom submissions may be lodged and the date by which any such submissions must be lodged,

(c) the address at which data, if any, on the chemical may be inspected.

(2) For the purposes of section 19 (2) of the Act, the prescribed time in relation to submissions is 30 days.

6 Notice of licence application

(1) For the purposes of section 28 (3) (a) of the Act, the prescribed particulars to be included in a notice of an application for a licence are the particulars set out in subclause (3).

(2) For the purposes of section 29A (4) (a) of the Act, the prescribed particulars to be included in a notice of an application for the transfer of a licence are the particulars set out in subclause (3) and the following:

(a) the name and address of the current holder of the licence,

(b) the address of the premises, if any, in respect of which the licence is held.

(3) A notice of an application for a licence or a transfer of a licence is to include the following particulars:

(a) the applicant's name and address,

(b) the address of the premises, if any, in respect of which the application is made,

(c) the name or description of the chemical or declared chemical waste to which the application relates,

(d) details or a description of any chemical control order in force in respect of the chemical or declared chemical waste,

(e) a list and details of the prescribed activities for which the licence is sought.

(4) Nothing in this clause requires:

(a) the inclusion in the notice of any matter that is required by the Act not to be disclosed, or

(b) the disclosure of any matter except in the manner in which it is required by the Act to be disclosed.

7 Time before appeal may be made

For the purposes of section 37 (1) of the Act, the prescribed time within which the Authority must notify the terms of a chemical control order made by it or its determination not to make any such order is 60 days.

8 Time within which appeal may be made

(1) For the purposes of section 38 (1) of the Act, the prescribed time within which a person may appeal against a chemical control order or a determination made under section 20 (d) of the Act is 30 days.

(2) For the purposes of section 39 (1) of the Act, the prescribed time within which a person may appeal against a decision of the Authority about a licence is 30 days.

9 Form of receipt

For the purposes of section 45 (3) of the Act, the prescribed form of receipt to be given by an authorised officer is the form in Schedule 1.

10 Registers of declared chemical wastes, chemical control orders and licences

For the purposes of section 52 (2) of the Act, the prescribed particulars to be included in a register are as follows:

(a) in the case of the register of declared chemical wastes—a copy of every order in force under section 10 of the Act,

(b) in the case of the register of chemical control orders—a copy of every chemical control order in force,

(c) in the case of the register of licences—a certified copy of each licence currently in force.

11 Seized property

For the purposes of section 48 (3) (b) of the Act, the prescribed manner for advertising a notice of an application for forfeiture of seized property is by advertising in a newspaper circulating throughout New South Wales.

12 Alternate members of Hazardous Chemicals Advisory Committee

(1) For the purposes of clause 4 of Schedule 1 to the Act, a person or body entitled to nominate one or more nominees for membership of the Committee is entitled to nominate an alternate member for each nominee of the person or body.

(2) The Local Government Association of New South Wales or the Shires Association of New South Wales, or both, may nominate alternatives for the persons nominated by them.

(3) The Minister may select:

(a) from the persons nominated under subclause (2), a person as an alternate member for the member selected from persons nominated by the Local Government Association of New South Wales or the Shires Association of New South Wales, or both, and

(b) a person as an alternate member for the member of the Committee selected by the Minister to represent major users of chemicals in New South Wales.

(4) During the illness or absence of a member of the Committee, the alternate member has and may exercise the functions of the member.

13 Technology assessment

(1) A person may apply to the Authority in the approved form for an assessment of any technology that the person proposes to use in relation to processing a chemical, or a declared chemical waste, that is the subject of a chemical control order.

(2) An application is to be accompanied by the prescribed fee specified in Part 2 of Schedule 2.

(3) The Authority may, in respect of the carrying out of any such assessment, charge the prescribed fee specified in Part 2 of Schedule 2.

14 Fees

(1) The fees set out in Column 2 of the table in Part 1 of Schedule 2 are the prescribed fees for the matters set out opposite those fees in Column 1 of the table.

(2) The Authority may at any time waive payment of part or all of a fee payable under this Regulation, whether in a particular case or in a class of cases.

15 Savings

Any act, matter or thing which had effect immediately before the repeal of the *Environmentally Hazardous Chemicals Regulation 2008* is taken to have effect under this Regulation.

Schedule 1 Form

(Clause 9)

Environment Protection Authority

Environmentally Hazardous Chemicals Act 1985 (section 45 (3))

Receipt for taking sample of substance or removing substance or container

This receipt is to:
[*name of occupier of premises*]
[*address of premises*]

I [*name of authorised officer*] an authorised officer under the *Environmentally Hazardous Chemicals Act 1985*, acknowledge by this receipt that:
(delete whichever of the following does not apply)

I have today taken from the above premises a sample of the following substance in the following quantity:
[*name or description of substance*]
[*approximate quantity of substance*]

I have today removed from the above premises the following substance or the following containers:
[*name or description of substance*]
[*size and number of containers*]

[*signature of authorised officer*]
[*address of authorised officer*]

Schedule 2 Fees

(Clauses 13 and 14)

Part 1 Fees payable under the Act

Column 1	Column 2
Matter for which fee is payable	**Fee $**
Application under section 13 (1) of the Act	1,935
Application for a new licence made under section 28 (1) of the Act on or after 1 September 2017 and on or before 31 December 2017	1,315
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2018 and on or before 31 December 2018	1,320
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2019 and on or before 31 December 2019	1,355
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2020 and on or before 31 December 2020	1,390
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2021 and on or before 31 December 2021	1,425
Application for a new licence made under section 28 (1) of the Act on or after 1 January 2022	1,460
Application to renew a licence made under section 28 (1) of the Act on or after 1 September 2017 and on or before 31 December 2017	820
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2018 and on or before 31 December 2018	825
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2019 and on or before 31 December 2019	845
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2020 and on or before 31 December 2020	865
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2021 and on or before 31 December 2021	885
Application to renew a licence made under section 28 (1) of the Act on or after 1 January 2022	910
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 September 2017 and on or before 31 December 2017	655
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2018 and on or before 31 December 2018	660
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2019 and on or before 31 December 2019	680
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2020 and on or before 31 December 2020	695
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2021 and on or before 31 December 2021	715
Fee for each year for which a licence is granted or renewed if the grant or renewal is made on or after 1 January 2022	730
Application to transfer a licence made under section 29A of the Act on or after 1 September 2017 and on or before 31 December 2017	150

Column 1	Column 2
Matter for which fee is payable	**Fee $**
Application to transfer a licence made under section 29A of the Act on or after 1 January 2018 and on or before 31 December 2018	152
Application to transfer a licence made under section 29A of the Act on or after 1 January 2019 and on or before 31 December 2019	155
Application to transfer a licence made under section 29A of the Act on or after 1 January 2020 and on or before 31 December 2020	158
Application to transfer a licence made under section 29A of the Act on or after 1 January 2021 and on or before 31 December 2021	160
Application to transfer a licence made under section 29A of the Act on or after 1 January 2022	165

Part 2 Fees payable under this Regulation

Column 1	Column 2
Matter for which fee is payable	**Fee $**
Application for an assessment of technology under clause 13 (2) on or after 1 September 2017 and on or before 31 December 2017	1,200
Application for an assessment of technology under clause 13 (2) on or after 1 January 2018 and on or before 31 December 2018	1,210
Application for an assessment of technology under clause 13 (2) on or after 1 January 2019 and on or before 31 December 2019	1,240
Application for an assessment of technology under clause 13 (2) on or after 1 January 2020 and on or before 31 December 2020	1,270
Application for an assessment of technology under clause 13 (2) on or after 1 January 2021 and on or before 31 December 2021	1,300
Application for an assessment of technology under clause 13 (2) on or after 1 January 2022	1,335
Fee for carrying out of assessment of technology under clause 13 (3) on or after 1 September 2017 and on or before 31 December 2017	9,680
Fee for carrying out of assessment of technology under clause 13 (3) on or after 1 January 2018 and on or before 31 December 2018	9,740
Fee for carrying out of assessment of technology under clause 13 (3) on or after 1 January 2019 and on or before 31 December 2019	9,985
Fee for carrying out of assessment of technology under clause 13 (3) on or after 1 January 2020 and on or before 31 December 2020	10,235
Fee for carrying out of assessment of technology under clause 13 (3) on or after 1 January 2021 and on or before 31 December 2021	10,490
Fee for carrying out of assessment of technology under clause 13 (3) on or after 1 January 2022	10,755