



## Summary of the Enforcement Provisions, Offences and Penalties

This document provides a guide to industry on the enforcement provisions under the *Industrial Chemicals (Notification and Assessment) Act 1989*.

The information presented should be used as a guide only and should not be relied upon for legal advice. Persons should refer to the *Industrial Chemicals (Notification and Assessment) Act 1989* and the Industrial Chemicals (Notification and Assessment) Regulations 1990 which can be accessed via the Comlaw website of the Australian Attorney-General's Department at <http://www.comlaw.gov.au>.

Offences committed under the *Industrial Chemicals (Notification and Assessment) Act 1989* are punishable by prosecution in accordance with the *Crimes Act 1914*. Those who are prosecuted and found to be in breach of the Act will be liable for fines of up to \$33,000 for an individual and \$165,000 for a company. The specific penalties for each offence under the Act are listed in the tables below.

1. New Industrial Chemicals
2. Priority Existing Chemicals
3. Secondary Notification After Assessment
4. Registration of Chemical Importers and/or Manufacturers
5. Annual Reporting and Record Keeping
6. Other Offences

## 1. NEW INDUSTRIAL CHEMICAL

<i>Section Offence</i>	<i>Guidance</i>	<i>Maximum Penalty Individual (Corporation)</i>
<i>s15A</i> Failing to comply with conditions of use of an AICS listed chemical <b>(Fault based offence)</b>	The Director may include in the AICS certain conditions associated with the mode of use or introduction of the chemical. The person importing or manufacturing the chemical must comply with those conditions.	\$13,200 (\$66,000)
<i>s21</i> Introducing a new industrial chemical (without a valid certificate/permit and not exempt) <b>(Fault based offence)</b>	A new industrial chemical is defined as one that is not listed on the Australian Inventory of Chemical Substances, or is listed but whose importation and/or manufacture is subject to certain conditions. All new industrial chemicals must be notified to NICNAS, and an assessment certificate or permit obtained before they can be imported/manufactured in Australia, unless there are specific grounds for exemption under the Act	\$33,000 (165,000)
<i>s21AA(4)</i> Failing to provide annual report. <b>(Fault based offence)</b>	Persons introducing a new industrial chemical under an exemption must provide a report to the director before or on 28 September of the following registration year.	\$1,100 per day to a maximum of \$13,200  (\$5,500 per day to a maximum of \$66,000)
<i>s21L(4)</i> Contravening any of the conditions imposed on a Commercial Evaluation Chemical (CEC) permit <b>(Fault based offence)</b>	Commercial Evaluation Chemical (CEC) permits are subject to stipulated conditions to safeguard public and occupational health, and the environment. All conditions specified on the permit must be adhered to by the importer or manufacturer and agreed user/s.	Director can cancel permit (s21N) AND \$33,000 (\$165,000)
<i>s21W(5)</i> Contravening any of the conditions imposed on a Low Volume Chemical (LVC) permit <b>(Fault based offence)</b>	Low Volume Chemical (LVC) permits are subject to stipulated conditions to safeguard public and occupational health and the environment. The holder of the permit (importer or manufacturer) must follow all the conditions on the permit.	Director can cancel permit (s21W(6)) AND \$33,000 (\$165,000)

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***New provision:****s22I*

Contravening any of the conditions imposed on the controlled use permit  
**(Fault based offence)**

Controlled Use permits are granted subject to conditions that the chemical is imported or manufactured only for the use stated on the permit. Conditions designed to safeguard public and occupational health and the environment also apply. The holder of the permit (importer or manufacturer) must follow all the conditions on the permit.

\$33,000  
(\$165,000)

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*s30C*

Using a chemical after receiving a revocation notice from Director (regarding Early Introduction Permit)  
**(Fault based offence)**

In certain circumstances, the Director may revoke an Early Introduction Permit (EIP). The holder of the permit must stop importing/manufacturing the chemical as soon as a revocation notice is received.

\$33,000  
(\$165,000)

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*s40K(3)*

Failing to keep supporting records for permits/certificates.  
**(Fault based offence)**

A person issued a Low Volume Chemical (LVC) permit, Controlled Use permit, or a self-assessed assessment certificate is required to keep records in support of information associated with their application for the permit/certificate for 5 years.

\$13,200  
(\$66,000)

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*s40L(3)*

Failing to supply requested information on permits/certificates to the Director.  
**(Fault based offence)**

A person must provide information to the Director if the Director requests information relating to a Low Volume Chemical (LVC) permit, a Controlled Use permit, or a self-assessed assessment certificate.

\$6,600  
(\$33,000)

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*s40N(4)*

Failure to provide annual report for permits/certificates  
**(Fault based offence)**

Persons introducing a new industrial chemical under a Commercial Evaluation Chemical (CEC) permit, Low Volume Chemical (LVC) permit, Controlled Use permit, or a self-assessed assessment certificate, must provide a report to the Director before or on 28 September of the following registration year.

\$1,100 per day to a maximum of \$13,200  
(\$5,500 per day to a maximum of \$66,000)

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## 2. PRIORITY EXISTING CHEMICALS (PEC)

<i>Section Offence</i>	<i>Guidance</i>	<i>Maximum penalty Individual (Corporation)</i>
<p><i>s48(7)</i>            Contravening a notice requesting information about potential Priority Existing Chemicals (PEC)  <b>(Fault based offence)</b></p>	<p>The Director may place a notice in the <i>Chemical Gazette</i> calling for information about an existing chemical that is being considered for declaration as a PEC. The <i>Chemical Gazette</i> notice will include details of the person/s required to provide the information and the period in which the information is to be provided (the time frame specified must be at least 28 days).</p>	<p>\$6,600            (\$33,000)</p>
<p><i>s56</i>            Introducing a PEC (without applying for assessment under <i>s55</i>)  <b>(Fault based offence)</b></p>	<p>Importing and/or manufacturing a PEC is prohibited without submitting an application for the assessment of the chemical.</p>	<p>\$33,000            (\$165,000)</p>
<p><i>s58(8)</i>            Contravention of a call for information about a PEC  <b>(Fault based offence)</b></p>	<p>For the purpose of assessing a PEC, the Director may, by notice in the <i>Chemical Gazette</i>, require a person to provide information about the chemical. All persons specified in the Gazette notice must provide the required information to the Director within the timeframe specified.</p>	<p>\$6,600            (\$33,000)</p>
<p><i>s61(4)</i>            Failure of an importer or manufacturer to comply with a notice prohibiting an activity while the chemical remains a PEC  <b>(Fault based offence)</b></p>	<p>If the Minister believes that an activity involving a PEC gives rise to an unacceptable risk of adverse health or environmental effects, he/she may prohibit that activity by a notice in the <i>Chemical Gazette</i>. An importer or manufacturer must comply with the notice.</p>	<p>\$33,000            (\$165,000)</p>
<p><i>s61(5)</i>            Failure of a person other than an importer or manufacturer to comply with a notice prohibiting an activity while the chemical remains a PEC  <b>(Fault based offence)</b></p>	<p>If the Minister believes that an activity involving a PEC gives rise to an unacceptable risk of adverse health or environmental effects, he/she may prohibit that activity by a notice in the <i>Chemical Gazette</i>. A person, other than an importer or manufacturer of the chemical must comply with the notice.</p>	<p>\$26,400            (\$132,000)</p>

### 3. SECONDARY NOTIFICATION AFTER ASSESSMENT

<i>Section Offence</i>	<i>Guidance</i>	<i>Maximum penalty Individual (Corporation)</i>
s64(1) Failure to notify the Director in writing within 28 days of particular specified circumstances giving rise to a recommendation for secondary notification <b>(Fault based offence)</b>	An assessment report, or an AICS entry, can recommend secondary notification in particular circumstances. If these circumstances occur, the Director must be informed in writing within 28 days.	\$13,200 (\$66,000)
s64(2) Failure to notify the Director in writing within 28 days of general circumstances giving rise to a recommendation for secondary notification <b>(Fault based offence)</b>	If <ul style="list-style-type: none"> <li>• the function or use of the chemical has or is likely to change;</li> <li>• the amount of chemical introduced has, or is likely to increase;</li> <li>• in the case of an imported chemical, it has begun to be manufactured;</li> <li>• the method of manufacture has, or is likely to, change;</li> <li>• additional information is available on the adverse health or environmental effects of the chemical; and/or,</li> <li>• other circumstances recommended on the assessment report for the chemical have occurred;</li> </ul> the person must notify the Director of the change in circumstances within 28 days.	\$13,200 (\$66,000)
s67 Introducing a chemical in contravention of a prohibition made by the Minister after failure to give secondary notification as required <b>(Fault based offence)</b>	The Director may, by notice in the Chemical Gazette, require secondary notification of a chemical. If person/s to whom the notice applies do not do so, the Minister may prohibit introduction of the chemical by that person/s.	\$13,200 (\$66,000)
s69 Contravention of a notice by the Director in the <i>Chemical Gazette</i> requiring information for	The Director may, for the purpose of assessing a new or existing industrial chemical requiring secondary notification, require through a notice in the <i>Chemical Gazette</i> : <ul style="list-style-type: none"> <li>• all persons who introduce the chemical; or</li> </ul>	\$6,600 (\$33,000)

the purposes of  
assessment of chemicals  
(existing/new) requiring  
secondary notification  
**(Fault based offence)**

- specified persons who introduce the chemical;  
or
  - specified persons who may have relevant  
information on the chemical;
- but who are not required to give secondary  
notification, to provide the Director the  
information specified on the notice.
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#### 4. REGISTRATION OF CHEMICAL IMPORTERS AND/OR MANUFACTURERS

<i>Section Offence</i>	<i>Guidance</i>	<i>Maximum penalty Individual (Corporation)</i>
<i>s80B</i> Introducing relevant industrial chemicals without a registration in force <b>(Strict liability offence)</b>	You must be registered with NICNAS if you introduce (import and/or manufacture) relevant industrial chemicals in a registration year. A registration year runs from 1 September to 31 August in the following year.	\$33,000 (\$165,000)
<i>s80Q</i> Failure to provide the Director with a written statement indicating the total value of relevant industrial chemicals actually introduced in a registration year by 31 October <b>(Strict liability offence)</b>	If you have been registered with NICNAS for a particular registration year, you must, within two months of the end of that registration year, provide the Director with a written statement of the total value of relevant industrial chemicals actually introduced in that registration year.	\$3,300 (\$16,500)
<i>s80QD</i> Failure to retain records for five years <b>(Strict liability offence)</b>	If you are registered for a particular registration year, you must keep all records to prove your introduction value for that year. These records must be kept for a period of five years.	\$3,300 (\$16,500)
<i>s80W(3)</i> Failure to comply with notice requiring information relating to the introduction of relevant industrial chemicals in a relevant registration year <b>(Strict liability offence)</b>	If the Director believes that you should have been registered in a particular registration year, he/she may require you to supply information relating to your introduction of relevant industrial chemicals for that registration year.	\$3,300 (\$16,500)

## 5. ANNUAL REPORTING AND RECORD KEEPING

<i>Section Offence</i>	<i>Guidance</i>	<i>Maximum Penalty Individual (Corporation)</i>
<p><i>s21AA(4)</i> Failing to provide annual report. <b>(Fault based offence)</b></p>	<p>Persons introducing a new industrial chemical under an exemption must provide a report to the director before or on 28 September of the following registration year.</p>	<p>\$1,100 per day to a maximum of \$13,200</p> <p>(\$5,500 per day to a maximum of \$66,000)</p>
<p><i>s40K(3)</i> Failing to keep supporting records for permits/certificates. <b>(Fault based offence)</b></p>	<p>A person issued a Low Volume Chemical (LVC) permit, Controlled Use permit, or a self-assessed assessment certificate is required to keep records in support of information associated with their application for the certificate and keep these records for 5 years.</p>	<p>\$13,200 (\$66,000)</p>
<p><i>s40L(3)</i> Failing to supply requested information on permits/certificates to the Director. <b>(Fault based offence)</b></p>	<p>A person must provide information to the Director if the Director requests information relating to a Low Volume Chemical (LVC) permit, a Controlled Use permit, or a self-assessed assessment certificate.</p>	<p>\$6,600 (\$33,000)</p>
<p><i>S40N(4)</i> Failure to provide annual report for permits/certificates <b>(Fault based offence)</b></p>	<p>Persons introducing a new industrial chemical under a Commercial Evaluation Chemical (CEC) permit, Low Volume Chemical (LVC) permit, Controlled Use permit, or a self-assessed assessment certificate, must provide a report to the Director before or on 28 September of the following registration year.</p>	<p>\$1,100 per day to a maximum of \$13,200</p> <p>(\$5,500 per day to a maximum of \$66,000)</p>
<p><i>s80QD</i> Failure to retain records for five years <b>(Strict liability offence)</b></p>	<p>If you are registered for a particular registration year, you must keep all records to prove your introduction value for that year. These records must be kept for a period of five years.</p>	<p>\$3,300 (\$16,500)</p>

## 6. OTHER OFFENCES

<i>Section Offence</i>	<i>Guidance</i>	<i>Maximum penalty Individual (Corporation)</i>
<i>s88(3)</i> Refusal to answer questions or produce documents requested during an inspection	You must produce documents and requested information to a NICNAS inspector to ascertain whether the Act or regulations have been complied with.	\$3,300 (\$16,500)
<i>s106(5)</i> Introduction or export of chemical in contravention of a Regulation made under s106 <b>(Strict liability offence)</b>	Regulations can be made under s106 to ban or restrict a chemical that is the subject of an international agreement to which Australia is a party	\$33,000 (\$165,000)
<i>s100G</i> A person commits an offence if the person fails to comply with the Director's request to provide information in relation to Australia's obligations under the Rotterdam Convention	The Director's request will specify the information that is required and how it is to be provided. It will also specify the final date that the information must be provided, giving at least 14 days notice of this.	\$6,600 (\$33,000)