

How does Australia's chemical regulatory system interact with its food regulatory framework?

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Chemical substances can have a wide range of applications, including in industrial use, cleaning products, therapeutics, food and beverages. As a result, there are areas of overlap between substances regulated under the Australian Inventory of Industrial Chemicals scheme (AICIS) and Australia's food regulatory system. This article explores these areas and some of the issues when using substances relevant to more than the food regulatory framework.

Overview of Australia's chemical regulatory system

Australia is regulated under multiple legislative and enforcement frameworks for food, cosmetics, pet chemicals and products, medicines and chemicals. The *Industrial Chemicals Act 2019* (Cth) (ICA) and *Industrial Chemical (General) Rules 2019* govern the rules and enforcement of industrial chemicals, including the Australian Industrial Chemicals Introduction Scheme (AICIS).

AICIS (formerly known as 'NICNAS') regulates the manufacture and import of industrial chemicals, as well as products containing industrial chemicals. AICIS assesses and maintains a database of permitted chemicals and permissions for use of each – the Australian Inventory of Industrial Chemicals (AIIC).

Each chemical listing on the AIIC is identified by a specific CAS number and name, as well as a description of the molecular formula. The listing also includes any associated names (e.g. "oils", "olive" or "extract" for olive oil) which are used for information only, and not as a formal method of identification.

Interaction between food and chemical systems

Chemicals can have many applications including in transport, food preparation, infrastructure, scientific research and engineering. Although one may presume that chemicals used for different purposes would be regulated under mutually exclusive regulatory regimes, there are important areas of crossover that are worth examining.

An "industrial chemical" (to which the ICA applies) is broadly defined in Section 10 of the ICA as a chemical or substance that has an industrial use. The ICA goes on to clarify that the AICIS framework only applies to chemicals that are *actually* used, or proposed to be used, for an industrial use.

Notably, the definition of “industrial use” **excludes** use of a chemical as food intended for human consumption (or in the preparation of such food). In the various state/territory *Food Acts*, “food” is defined as a substance represented as being for human consumption, an ingredient or additive for such substance, or other preparatory substances such as processing aids.

This means that in Australia, a substance can be classified as a “food” under the local state or territory *Food Act* (and therefore come under the purview of the *Australia New Zealand Food Standards Code*) (**Food Standards Code**) whilst also being classified as an industrial chemical. Whether a substance is regulated as an industrial chemical or a food depends on its intended use.

For example, coconut oil, olive oil and soybean oil are each listed as industrial chemicals on the AICC. Each of these substances is commonly used as a food ingredient or component of food in a wide variety of everyday scenarios. As such, they would ostensibly be permitted for use as food or a food ingredient *and* regulated under the AICIS, depending on the product in which they are used.

Regulation of chemical substances in food

Chemical substances may have different uses in food. Some substances that are also regulated as chemicals (e.g. olive oil) are traditional food ingredients and may be added to food without additional regulatory hurdles.

However, just because a chemical substance is intended for use in food (and therefore does not meet the definition of ‘industrial use’), it does not automatically mean that the substance can be added to food without additional steps.

Some chemicals would be used to perform a technological function (e.g. as a flavour or preservative or as a cleaning agent used on food contact materials) or nutritional function. Some chemical substances might have no history of safe use in food. Chemical substances used in this way might be classified as a food additive, processing aid, nutritive substance or novel food, and cannot be used unless expressly permitted under the Food Standards Code. If that specific usage is not permitted, it may be necessary to apply to amend the Food Standards Code. Whether a substance falls under one of these categories requires a detailed assessment.

Some chemical substances might also be listed on the Standard for the Uniform Scheduling of Medicines and Poisons (**Poisons Standard**). Substances that are listed on the Poisons Standard can only be used in specific product categories (e.g. prescription-only medicines) depending on which ‘Schedule’ they appear under. Many substances listed on the Poisons Standard cannot be used in food, unless an exemption applies or the Poisons Standard listing is qualified in some way.

Regulation of industrial chemicals under AICIS

If introducing a chemical product into Australia, either as an importer or manufacturer, pre-approval will generally be required from AICIS. There are some exceptions, including if the substance is already listed on the AICC. However, even if the substance is already listed in the AICC, the business may be subject to ongoing reporting requirements.

In most situations, pre-approval is mandatory under AICIS and protection of trade secrets or intellectual property is not considered to confer an exemption. Failing to get the required approvals from the correct regulator can result in product recalls, fines or commercial loss from product being held at the Australian border until the approval is granted.

We provide detail on the various pre-market registration steps under the AICIS scheme in our [August 2020 edition of FoodLegal Bulletin](#).

Implications for businesses that supply chemicals for multiple uses

Commercial manufacturers, suppliers or importers of chemical products might be subject to requirements under both the AICIS and *Food Act* frameworks depending on the intended use for their products.

For example, a business might import chemicals for multiple potential uses including food use (e.g. bulk imports of isolated food additives) and use in detergents. In such a case, the business would need to ensure that all chemicals imported and supplied for non-food use comply with relevant AICIS requirements. The business would also need to ensure that any food ingredients it supplies comply with relevant requirements under the Food Standards Code (e.g. relevant limits for contaminants and toxicants).

A food business that decides to also supply cleaning or disinfectant products must also be aware of its obligations under AICIS. Even if all of the substances it wishes to use in its cleaning product are food-grade ingredients, it must still comply with AICIS requirements for each ingredient that meets the definition of an industrial chemical, because these ingredients are no longer being used in food.

It is therefore imperative for a business that works with chemical products to properly categorise each substance and end product according to its purpose; whether it is being used as a food ingredient, industrial chemical, or for use as (or in) a therapeutic good.

Marketing considerations for food and chemical products

The classification of a substance, and its intended purpose, can influence the way that marketing claims are perceived by consumers, and will therefore impact the level of risk associated with some forms of marketing. This can include the compliance choices available in the manner of identification of the relevant chemical on pack, or the choices available for the making of a product claim about an attribute of the product.

One good example (even though the product was not a food) was the 2018 case of *Aldi Foods Pty Ltd v Moroccan Oil Israel Ltd*. The facts to be determined were whether “natural” claims made about a shampoo product were misleading or deceptive in breach of the Australian Consumer Law. The Full Court of the Australian Federal Court found that a reasonable consumer of the product would not assume that the product was made wholly or substantially from natural ingredients. The Court therefore concluded that the claim was not misleading, even though the product contained chemical substances that were synthetically derived or processed.

In making this finding, the Court highlighted that the expectations of the reasonable consumer can change according to the context of the product and how it is sold. Likewise, when a food product is marketed as “natural”, it is more likely that the reasonable consumer might understand a “natural” claim to mean that the product is unprocessed or wholly or substantially made up of ingredients that are not synthetic.

If you have any questions on the contents of this article, please feel free to [contact us](#).

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