

Options for reforming the National Industrial Chemicals Notification and Assessment Scheme Regulation Impact Statement

The National Toxics Network (NTN) appreciates the opportunity to make a submission on Options for reforming the National Industrial Chemicals Notification and Assessment Scheme Regulation Impact Statement.

NTN supports Option 5 as it provides the best protection for Australian human health and the environment in the regulation of industrial chemicals.

A pre-market regulatory focus provides the greatest certainty for the community, industry and government, particularly risk managers, for the safe and sustainable use of industrial chemicals in Australia.

NTN believes that there is a broad community expectation that industrial chemicals are assessed by Australian regulators for the long-term protection of human health and the environment before they are allowed for use in Australia.

NICNAS has implemented the Low Regulatory Concern Chemicals Programme since 2003 meaning that industry has had the benefit of this programme for 10 years already and therefore there is little credibility in industry claims that further reduced regulation is required to introduce safer chemicals onto the Australian market.

Furthermore, no information has been provided by industry or NICNAS, despite a review of the programme in 2010, that provides evidence that further exemptions are warranted or that the claims of safer, less toxic chemicals are in fact being introduced into Australia to replace more toxic categories.

This information is urgently needed before such major changes to the role of NICNAS under this RIS are made. As such NTN supports the continuation of the current LRCC programme with a full evaluation including the generation of data on the chemicals and categories of chemicals that are being introduced and those that are being replaced and a full cost benefit of this programme.

The community gave support to this programme on the expectation that it would result in less toxic chemicals being introduced onto the Australian market. If this programme has failed then this must be identified, evaluated and communicated to all stakeholders. Expanding the LRCC programme without a full review and assessment of the programme would benefit industry but totally fail to meet the expectations of civil society and the standards for good governance and procedural fairness.

Until the programme has been justified, perhaps it even requires a RIS, the community can not be expected to endorse any further reduction in regulatory burdens for the introduction of new chemicals. The failure of this RIS to even identify the LRCC programme is cause for concern as it suggests that there may be an

intention to expand and duplicate an existing programme that has not yet shown its benefit to industry, government and civil society.

NTN agrees with the concept that NICNAS's efforts should be better aligned and focused on the assessments of more hazardous chemicals (both new and existing).

However, NTN does not agree with the assumption that this will occur as a result of lowering requirements for 'new' chemicals deemed (or 'self-assessed' by industry) to be of low concern. Industry has a vested interest in assessing chemicals as 'low concern' so as to reduce their regulatory burdens and increase their profits and has largely already benefited through the LRCC programme.

In relation to the preferred proposal Option 3, Chemicals defined under Category 2 "low concern" new chemicals, we are very concerned that under this option industry would be able to introduce up to 10 kg of a new chemical assessed by themselves as being of 'very low concern' without being required to notify anyone. There would in effect be no list of these new chemicals in the country, which would take Australia back to the situation before the ICNA Act was introduced in 1988. It would be impossible to track how much was being introduced, by whom, when, where, etc thus creating a data gap in knowledge about what might be in use in Australia.

In regards to chemicals in Category 3 'Low concern' - with only pre-entry notification and based on 'self-assessment against criteria ', in particular the <10kg of nanomaterials, we note that the NAG has done some work regarding assessment of nanomaterials and has identified some nanomaterials of concern. NTN does not support the categorisation of nanomaterials by weight and there is growing international evidence and scientific concern to take a precautionary approach to approving the use of nanomaterials in the open market. A complete regulatory framework for nanomaterials is required before their introduction into the Australian market can be endorsed by the community.

The current IMAP is designed to address the backlog of existing chemicals that need assessment because they are already in use in Australia without having had exposure assessments. Industry has already benefited economically for many decades from this situation and any erosion of the Existing Chemicals Review cannot be justified. This programme was recently endorsed by the government and funding was allocated to start the assessment of the first 3000 chemicals. NTN believes this programme should continue including the new assessment products that this reform work has proposed which in effect provides many of the benefits that this RIS has proposed.

An important component of the ECR programme was the national community engagement strategy that was undertaken in 2006 and the recommendations that came from the community, government and industry stakeholders during this engagement. Indeed the industry sector was heavily involved in this review programme and provided much of the input to the programme and its recommendations. It would be duplicitous and procedurally unfair to ignore this 10 year project and create a new model to address the urgent and overdue problems posed by existing chemicals on the AICS.

Therefore NTN supports the continuation of the IMAP project and the full recommendations of the Existing Chemicals Review as supported and funded by the government recently with the full involvement of industry, community and government stakeholders.

NTN supports the increased use of overseas assessments done by comparable countries. It is important that Australian conditions are considered in any such use of overseas assessments but that where a hazard determination has been made overseas then NICNAS should be required to implement similar hazard recommendations and/or actions to protect human health and the environment in

Australia. Any use of overseas assessment data should not result in the undermining or lowering of any Australian occupational, public health and environmental protection standards.

Furthermore, the failure of the RIS to include a major recommendation of the ECR – a national adverse experience and surveillance monitoring programme - as an integral part of the assessment of industrial chemicals and the reform of NICNAS is a major flaw. A closed loop regulatory model that has the ability to measure and evaluate the effectiveness and reliability of that regulation in the Australian environment and in the human population is required to ensure community confidence. NICNAS must be able to feed adverse experience data back into the chemical assessment process so as to ensure that any risk management recommendations are effective, appropriate and measurable for the long-term protection of human health and the Australian environment.

Therefore, NTN supports increased environmental monitoring for chemical residues, human health bio-monitoring and epidemiological studies as a critical component of any industrial chemical regulatory model. The RIS should be amended to include this.

The concept of 'safeguards' as described in the RIS is too loose and needs to be clearly defined. There needs to be clear compliance guarantees including the uptake of recommendations on restrictions and how and when they apply.

NTN does not agree that the current 'safeguards' of 'feedback from State and Territory risk managers' are in anyway sufficient and adequate. NTN supports increased communication with risk managers. However the proposed risk management advisory committee will not be sufficient alone to identify adverse impacts of industrial chemicals in Australia especially where these risk management bodies do not have adverse experience reporting mechanisms themselves.

Additionally NTN recommends a national register of all nanomaterials used in Australia, irrespective of a weight threshold. The idea of a weight threshold should be abandoned as stated above.

NTN recommends urgent action to address the issue of endocrine disruptors as a separate category in any chemical categorisation.

Finally NTN recommends a clear commitment and indication in this RIS as to how NICNAS and the Australian government will commit to engaging and supporting the role of civil society in the management and regulation of industrial chemicals so as to uphold Australia's commitment to the SAICM and other international chemicals conventions. The CEF has provided an effective and proven model for civic engagement based on internationally recognised principles which should not be lost or eroded.