

Review of the National Industrial Chemicals and Notification and Assessment Scheme (NICNAS)

Regulation Impact Statement (Draft)

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The National Toxics Network (NTN) appreciates the opportunity to make a submission to the Regulation Impact Statement (Draft) 2014. However, we would like to express our significant concern and disappointment about the engagement process.

In particular, we note that this draft RIS is only being circulated for ‘targeted consultation’, despite the fact that it varies considerably from the previous draft RIS in terms of Options presented and details around each option, which we understand means it should once again go out for broader consultation, or at least be presented to all those who have previously made submissions.

Despite the finding by the Productivity Commission in 2008 that the ‘protection of public health, the environment and national security is underprovided by the private sector’, the *Summary of Stakeholder Views and Explanatory Paper* identifies ‘reducing the burden of regulation and red tape’ as the main context for the current version of the draft RIS.

While we support regulatory efficiency, we believe the context for these reforms, and the measure of their success should be whether or not they provide better protections for human health and the environment from the risks associated with industrial chemicals in Australia, while also being efficient for industry.

The community has a legitimate reason to be concerned about the risks associated with industrial chemicals. Up to 40,000 chemicals were ‘grandfathered’ onto the AICS in Australia without adequate assessment. Civil society rightly expects and demands that regulations be put in place that will protect them from those risks, not compound them.

We also note that this reform process has been limping along since 2011. Over that time we’ve repeatedly asked for information to enable us to make a more informed assessment of the Options being presented.

For instance, we've asked for a detailed assessment of the low regulatory concern chemicals programme, in operation since 2003, to determine whether it's actually already delivering better outcomes for the community, environment and industry. This information has not been provided, which is very disappointing since the community supported this programme.

Despite industry claims that they are being unduly burdened by regulations in their efforts to bring newer, safer chemicals to market, an examination of the facts simply don't support this view.

The *Summary of Stakeholder Views and Explanatory Paper* states that under the current regulatory arrangements, approximately 9000 new chemicals are introduced each year without pre-market assessment by NICNAS based on exemptions and no *unreasonable risk* criteria. Only around 3%, or 300 new chemicals require NICNAS to complete a pre-market assessment. Once again, keep in mind that industry already has 40,000 chemicals 'grandfathered' onto the AICS without pre-market assessment, so that was a huge economic advantage to begin with.

While we agree NICNAS should have the resources and streamlined processes to ensure pre-market assessments are done efficiently, the facts indicate the majority of new chemicals entering the market (9000 per year) are in fact 'new and safe' by virtue of the fact that they were exempted from pre-market assessment. Regulatory effort is already being aligned to risk.

In our previous submission we supported Option 5, which we understand has now become Option 4, due to the fact that the previous Option 4 was subsequently removed as an option.

This change has been very confusing, especially as it wasn't documented in the current draft. This will be extremely confusing for stakeholders not included in this 'targeted consultation' process.

We note the RIS prefers Option 3, however NTN continues to support Option 4 (previously Option 5) for the following reasons:

- Option 4 has the capacity to address all stakeholder concerns, not just industry/political concerns about 'regulatory burden' and 'reducing red tape'. The context for these reforms has been artificially narrowed and do not seek an outcome in the best interests of the community and the environment as their primary objective.
- We fundamentally believe the regulator should have the capacity as a risk management agency and be enabled to impose conditions on the introduction of any chemical to manage its risks where necessary.
- We do not support having classes of chemicals (as proposed in Option 3) that would be 'self-assessed' and never to be notified to NICNAS. Toxicology is undergoing a revolution in terms of the scientific understanding of chemical burdens, generational impacts, critical

windows, endocrine disruption, impacts of chemical mixtures etc. What scientists and regulators know today will be vastly different to what will be known in the next 5-10 years.

NICNAS must keep track of what chemicals are being used in Australia by way of notifications at the very least. Notification is a minor 'burden' to industry compared to the burden being asked of the community in Option 3, that is, to 'trust' that a certain class of chemical will never cause harm now, or

in the future. A record at least enables NICNAS to look at something in the future if problems arise.

- We support putting regulatory effort where it's required, however the risk matrix as it is being presented in Option 3 does not address the case for a class of chemicals at the other end of the risk spectrum.

For risk-based regulation and incentives to drive the more rapid introduction of low risk chemicals and free up the time of the regulator to focus on higher risks, then the regulatory effort at the other end also needs to be examined.

No proposals are being made in Option 3 to define a class of chemicals according to their hazard criteria that are going to require too much regulatory effort because they're fundamentally unmanageable chemicals. It appears there's an unending appetite for risk, which is unacceptable to civil society.

None of the Options propose a national adverse experience and surveillance monitoring programme - as an integral part of the assessment of industrial chemicals. 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.

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.

Finally, NTN is deeply concerned about the dwindling commitment to engaging and supporting the role of civil society in the management and regulation of industrial chemicals. The CEF has provided an effective and proven model for civic engagement based on internationally recognised principles which should not be lost or eroded.

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