

Implementing reforms to the National Industrial Chemicals Notification and Assessment Scheme

Consultation Paper 1 – NICNAS Reforms

The National Toxics Network (NTN) appreciates the opportunity to make a submission on *Implementing reforms to the National Industrial Chemicals Notification and Assessment Scheme, Consultation Paper 1*.

When the Government put forward options for reforming NICNAS, NTN supported Option 5, which outlined a pre-market regulatory focus to provide the greatest certainty for industry and the best protections for human health and the environment in the regulation of industrial chemicals.

There is a strong community expectation that industrial chemicals will be assessed and regulated to provide long-term protection of human health and the environment *before* they are permitted for use and sale in Australia.

We commonly hear the phrase from bewildered consumers - *'The authorities wouldn't allow on the shelves if it wasn't safe would they?'* And yet, time and time again, everyday products are turning up with potentially toxic and polluting ingredients, many of them imported with little regulatory oversight presenting significant risks to people and the environment in their use and disposal.

It's therefore extremely disappointing the option the government is proceeding with in implementing reforms essentially proposes the completely opposite approach, whereby the vast majority of new chemicals will be self-assessed by industry and permitted onto the market with little regulatory oversight. This wholesale move to what is essentially self-regulation is emphatically not supported by NTN or our associates.

The *Consultation Paper* proposes, "As a result of the reforms, the number of industrial chemicals that are subject to pre-market assessment by NICNAS is expected to decrease by more than 70%, with pre-market assessments dropping from approximately 3.3% of all new chemicals to 0.75%. It is anticipated that this, combined with reductions in annual reporting requirements, will reduce the regulatory burden on industry by around \$23 million annually".

As a community and environment representative reading this statement, it feels as if the welfare of the people and environment has been sacrificed for a few million dollars on behalf of a multi-billion dollar global chemical industry

that will continue to profit at the expense of community and environmental health.

The *Consultation Paper* doesn't provide any rationale as to why our interests will be best served by moving to a post-market, self-regulatory scheme other than saving industry money and 'streamlining the existing risk assessment process for new and existing industrial chemicals'.

There is no explanation as to how this approach will deliver safer chemicals and better health and environmental protection, which is the legislated requirement of the scheme.

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) was established in 1990 under the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act).

The objects of the Act are to provide for:

- i. aiding in the protection of the Australian people and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals;

The Consultation Paper provides no context for the general public to understand the base from which these reforms are being proposed. Anyone reading it would think we have a well functioning industrial chemical regulatory scheme in Australia which is adequately protecting people and the environment, when the truth is, we don't.

NICNAS's own statistical assessment indicates that 85% of existing chemicals on the Australian Inventory of Chemical Substances (AICS) have not been assessed.

If the government is genuinely trying to re-balance regulatory effort to match risk, it would make sense to focus on the 85% of chemicals already in the marketplace that have not been assessed since they represent the greatest volume and number of chemicals with unknown hazards and unquantified risks.

However, the reform process makes no mention of how it proposes to manage the 'unassessed chemicals' elephant in the room. Instead, this entire reform process is narrowly focussed on the 7% of chemicals that are new chemicals.

Figure 2: *Reformed process for chemical introduction* in the Consultation Paper illustrates the fundamental weakness of the proposed reforms and exposes it as a nothing more than a smokescreen for industry self-regulation.

If an 'introducer' wishes to introduce a new chemical, the first question asked - 'is chemical listed on AICS?'. If the AICS listing has no conditions of use or defined scope of assessment, then the introducer can register with NICNAS and introduce the chemical without notifying NICNAS. But in all likelihood the

chemical has no conditions of use because it's one of the 85% of chemicals on AICS that has never been assessed.

This leaves the backdoor open for 'introducers' to continue to use unassessed chemicals. It will not provide any incentives for industry to introduce safer, greener chemistries via the proposed new self-regulatory chemical assessment process.

Furthermore, it will continue to distort the market because it ensures an easy ride for the continued use of existing unassessed chemicals. Why would anyone bother to try and introduce a safer chemical when they can keep using the old, unassessed ones and not be penalised?

NICNAS implemented the *Low Regulatory Concern Chemicals Program* (LRCCP) in 2003 and industry has had the benefit of it for 13 years. There is little credibility in industry claims that further reduced regulation is required to introduce safer chemicals onto the Australian market. The Consultation Paper makes no mention of the LRCC program, how it's worked, or not, and why it needs to be scrapped in favor of the proposed reforms.

The community gave its support to the LRCCP program on the expectation that it would deliver safer, greener chemistries onto the Australian market. We have asked for a review of it for many years. If this program has failed to deliver then this must be identified, evaluated and communicated to all stakeholders to justify why the proposed reforms are needed.

The *Inventory Multi-tiered Assessment and Prioritisation* (IMAP) program, which community and environment groups got behind as an effective method to fast-track the assessment of the 85% of unassessed chemicals on AICS also goes unmentioned in the Consultation Paper. Has it been successful? Why does it need to change?

IMAP was 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 while the community and environment has paid the price for unassessed and unregulated chemicals on the market.

Worryingly, we also read that the Prior Existing Chemicals (PEC) assessment process will also be abolished under the proposed reforms. It reads as if the issue of unassessed existing chemicals will now just be swept under the carpet.

If an 'introducer' wants a new chemical, the proposal outlined in Figure 2 of the Consultation Paper is for industry to self-assess the exposure and hazard band, the majority of which will not require any independent assessment according to NICNAS's own estimates.

So, if 85% of existing chemicals on AICS are unassessed, with a backdoor open to their continued use and no program outlined to address this, and, an estimated 70-90% of new chemicals under the proposed scheme won't require assessment, that doesn't add up to many chemicals in the marketplace which will be independently assessed and regulated.

We're reluctant to engage with any details of the proposed reforms in the Consultation paper as it's written, as this proposal is fundamentally unacceptable to the community.

The Consultation document provides no rationale for the implementation of the reforms based on assessment of the status quo and no evidence that it will lead to better outcomes in the protection of the community and environment.

To date, the consultation process that NICNAS has embarked upon has ignored the principles of its own Community Engagement Charter and has unsuccessfully engaged civil society in the process of reform as evidenced by poor notification and attendance at workshops and little interest in this Consultation Paper.

NTN recommends a clear commitment and indication 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 international chemicals conventions and agreements.

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