

SUBMISSION

Implementing reforms to the National Industrial Chemicals Notification and Assessment Scheme

Consultation Paper 2

The National Toxics Network (NTN) attended the Sydney Workshop on Consultation Paper 2 and appreciates the opportunity to make a submission on *Implementing Reforms to the National Industrial Chemicals Notification and Assessment Scheme, Consultation Paper 2*.

When the Government first 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.

The Government however has taken the opposite approach. The reforms as detailed in Consultation Paper 2 aim to ‘cut regulatory red tape’ by exempting ‘low-risk’ new chemicals from pre-market regulatory oversight, relying instead on industry self assessment and post-market surveillance, although few details have been provided about the scope and budget for this work.

The rationale given for the reforms is that regulatory effort should be better aligned with risk so that a ‘lighter touch’ regulatory approach can be applied to lower risk chemicals, supposedly freeing up resources for NICNAS to work on high risk chemical assessments and the problem of un-assessed chemicals already in use.

No data is presented to support the assumption that industry will respond by getting safer chemicals to market faster. An analysis of previous initiatives such as ‘low regulatory concern chemicals’ could have provided some useful data.

What’s hidden from public view in this reform process is the fact that there are already 38,000 un-assessed chemicals listed on the Australian Inventory of Chemical Substances (AICS). By any reasonable assessment this represents a significant and unknown risk to public health and the environment, but little is specified in the reforms as to how this problem will be addressed.

Consultation Paper 2 at least provides some reassurance that there will continue to be NICNAS initiated assessments that will replace the IMAF and PEC programs, but the scope and budget for this work have not been detailed.

The Consultation Paper states that, ‘a fundamental principle of the reforms is that health, worker safety and environment protections must be maintained’.

We say protections that protections should be *improved* not just maintained. By 'maintaining' it implies that what is already occurring is effective and adequate, when clearly it is not.

NTN would like to make it clear that by making submissions and participating in this reform process, we are not endorsing the Government's approach to these reforms. We will continue to advocate for a pre-market regulatory scheme that puts the health of the community and environment at the centre of regulatory decision-making as well as addresses the significant problem of un-assessed chemicals already in widespread use.

Specific points:

International assessments:

- We do not support industry's position that the Health Minister's criteria for use of international assessments be disregarded in order to ensure USEPA risk assessments are accepted. If the USEPA reports don't meet the criteria established by the Health Minister, then they can't be used. This pathway can lead to hazardous chemicals being introduced without NICNAS assessment, so criteria must be adhered to.
- We would like to see details of how NICNAS with engage with state and territory risk managers in relation to accepting international decisions and by what mechanisms will the enforcement of any risk management requirements occur? If risk managers don't step up to the mark, what will happen?
- We are concerned that hazardous cosmetic ingredients in 'low concentrations' will be subject to 'light touch regulatory approach'. In some instances, such as EDCs, low concentrations are still highly hazardous. What about nanomaterials? Why rely only on volume data and not hazard data in this instance? It's contrary to the approach taken elsewhere.
- We do not support the approach taken by the USEPA for industry to self-assess the public health risks from use of cosmetics and do not support Australia going down that path.

Exempted and Reported chemicals:

- From the outset, community representatives have raised concerns about the proposal for exempted and reported chemicals to not be publically recorded. What happens down the track if one of those exempted chemicals industry has self-assessed as 'low risk' turns out to be a high risk?

For instance, what if a chemical were later discovered to be an EDC or carcinogen? How would anyone be able to trace back to ascertain any details? If chemicals get used in unintended ways down the track, the risk profile also changes and there would be no way to determine that.

- We do not support the downgrading of requirements for introducers to only

declare a limited set of information, as we believe volume, type and use is essential information to record. If a use changes, then exposure risks change and this needs to be reported and recorded.

- If these reforms are adopted it is envisaged that thousands of chemicals will be self-assessed by industry as exempted but no details are given as to the scope and budget proposed for post-market auditing to ensure these chemicals are in fact low risk. Given the track record of industry in the past, it's understandable that consumers would be concerned about industry self-assessments. Eg – BPA, phthalates, PFCs, triclosan etc etc.

Transparency and Accountability

- As with all risk assessments the quality of the data will determine the robustness of the outcome. We have serious concerns about industry 'self assessing' based on its own data. By allowing this Government will be failing in its commitment to transparency and accountability to the community in regulatory decision-making.
- We want to see a publically available list of registrants on the NICNAS website as well as a list of Exempted and Reported chemicals. If industry is genuinely introducing low risk chemicals then the community has a right-to-know what they are so that they can make informed choices in the marketplace. We see this as positive information that industry would want the community to know about.
- We support the linking of assessment reports/summaries and useful information about risks to entries on AICS. We understand there are issues concerning CBI, but as a principle, the community should have access to as much information as possible. If adequate protections can be found we support the merger of the confidential AICS with public AICS.
- If the Director is to be given the power to amend AICS, then the decision-making process must be public and accountable.
- While not within the scope of the proposed reforms, we would like to point out that it is totally unacceptable that so many products already in the marketplace do not list on their labels what the chemical contents are.
- It would be totally unacceptable to move NICNAS from the Health portfolio to the Industry portfolio, as has apparently been proposed by industry. The National Industrial Chemicals Notification and Assessment Scheme (NICNAS), established in 1990 under the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) states:

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.

Risk Matrices

- The fundamental problem with the proposed risk matrices is that there appears to be no limits to risk. It is not acceptable that a chemical that is PBT, EDC or ozone depleting could even be assessed and theoretically permitted for use, albeit with risk management strategies. There are some hazards the community is no longer willing to wear.
- Nanomaterials need to be treated separately. It is unthinkable there could quantities of <100kg permitted in low bands on the risk matrix for research.

Direct Releases

- The definition doesn't appear to take into account intentional and direct release to the atmosphere, for instance, in the flaring of gas wells, which contain industrial chemicals used to frack for coal seam gas or the release to the atmosphere of industrial chemicals in wastewaters stored in open evaporation ponds in mining processes.
- In terms of the appropriate treatments mentioned, what happens when there isn't an appropriate treatment? For example, triclosan which is added to products designed to be washed down the drain such as toothpaste and soap, cannot be readily removed by sewage treatment plants. Why is it permitted in products when there is no appropriate disposal method?

Confidential Commercial Information

- We do have concerns that the process and decision to determine whether a company's application for confidentiality outweighs public interest would be made entirely 'in house' or by the NICNAS Director, without any independent oversight as previously occurred with the NICNAS Technical Advisory Group.

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