

Submission to NICNAS Consultation Paper 4

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Contact:

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The National Toxics Network (NTN) attended the Sydney Workshop on Consultation Paper 4 (CP4) and appreciates the opportunity to make a submission on *Implementing Reforms to the National Industrial Chemicals Notification and Assessment Scheme, Consultation Paper 4, October 2016*.

As in each submission NTN has made to this reform consultation process, we re-state that from the outset we have not supported the impetus behind these reforms, which has been entirely about 'red tape reduction for industry'.

These reforms have not been developed to address any documented failure of the regulator, nor have they sought to improve the regulator to better deliver on its core objectives to protect the health of the community and environment from the risks of industrial chemicals in Australia.

CP4 states that the Australian Government has decided to reform NICNAS to 'make regulatory effort more proportionate to risk' and to 'promote innovation by encouraging the introduction of lower risk chemicals'.

What has not been provided to support this reform agenda is any analysis of the case for it. The previous system that was already in place to encourage the introduction of lower risk chemicals via the Low Regulatory Concern Chemicals process was never assessed for its effectiveness. NTN has repeatedly asked for data about how often this process was taken up and whether it resulted in any net outcome, which indicated an encouragement of the introduction of lower risk chemicals into Australia.

We also share the concerns of other organisations that the weak link in the regulation of industrial chemicals in Australia is the reliance on risk managers to implement the outcomes of NICNAS risk assessments. These reforms do not address this problem and arguably they will make it worse by placing more reliance on risk managers. It is also a failure of industrial chemicals regulation in Australia that the regulator does not assess products for their risks in a life-cycle context.

The effect of the reforms if they are implemented as proposed is that a staggering 70-90% of chemicals coming into Australia will no longer get assessed by NICNAS, but by industry itself.

We have serious concerns about the process proposed for the delegated legislation that will contain vitally important information about the criteria that determines the risk matrix, but will not be subject to parliamentary debate and can be easily changed and manipulated during its development and into the future.

CP4 fails to indicate if the delegated legislation will be regulation or code of practice and also indicates further consultation will occur. Potentially this opens the way for changes in the criteria for the hazard and/or exposures bands, a key component of the proposed changes.

As CP4 notes, stakeholder views on the reforms have been polarized and vary based on sector. The chemical industry are essentially happy because they are getting the deregulation agenda they want while most other stakeholders are unhappy because they see that the scheme is being radically diminished in terms of its protections of community health and the environment and these concerns have not altered the course of these reforms.

CP 4 proposes the framework for the primary legislation. We have concerns that overall it will significantly diminish transparency and accountability to the Australian community. It will also provide a framework whereby industry can easily game the system and the likelihood of this being discovered is low and entirely dependent on a limited compliance and auditing program.

Our concerns:

1. By proposing the self-assessment by industry for 'exempted' and 'reported' low risk chemicals and then not requiring any record of their entry to Australia to be kept by NICNAS which is accessible to the public, this diminishes the current level of transparency.

What happens when one of those 'low-risk' chemicals turns out to be tomorrow's toxic chemical that's polluting the environment and causing a public health problem? There will be no records for anyone to do any research to find out and the lack of records may hamper potential legal processes in the future should they arise.

2. By allowing the introduction of medium to high-risk chemicals via the 'international regulatory pathway' for chemicals which, should otherwise be assessed chemicals by NICNAS and be placed on the AICS, this legislation provides a back door for the easy introduction of high risk chemicals that may be subject to limited risk assessments based on their proposed use in Australia. Medium to high-risk chemicals will come in as 'reported' chemicals and no publically accessible record will be kept. This diminishes the current level of public scrutiny as well as assessment.
3. The proposal to provide a pathway for 'assessed' medium to high risk chemicals via 'commercial authorisation' provides another loop hole that can be gamed by industry as well as reduce transparency and accountability to the community. There will be no published detailed assessment about these chemicals.

It's not hard to imagine how this loophole will be exploited, for instance, by those companies importing fracking and drilling chemicals who do not want their chemicals assessed for their hazards and potential impacts to the environment in which they are used and could essentially 'pretend' they are evaluating them for several years.

We support:

1. NICNAS having the authority to impose conditions on the introduction of high risk chemicals and stop introduction.
2. Mandatory calls for data and information for NICNAS initiated assessments.
3. The introduction of a graduated compliance tool kit.
4. The continuation of an assessment program for the 30,000 un-assessed chemicals currently on the AICS.
5. The cessation of the 'confidential AICS'.