

Senate Community Affairs Legislation Committee
Inquiry into the Industrial Chemicals Bill 2017 & related Bills

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Introduction

The National Toxics Network (NTN) welcomes the opportunity to make this submission to the Senate Community Affairs Legislation Committee. However, we wish to express our concern and disappointment at the haste in which this Inquiry is being conducted given the significant and complex changes to the regulation of industrial chemicals proposed in these Bills.

NTN provides a central repository of technical expertise and educational materials to the community across Australia in relation to chemical regulation and chemical pollutants and their impacts on environmental health.

NTN is the Australian NGO focal point for the International Persistent Organic Pollutants Elimination Network (IPEN) and works towards the full implementation of the *Stockholm Convention on Persistent Organic Pollutants* (POPs) and other global chemical conventions and agreements to which Australia is a signatory.

NTN committee members have been involved in a range of state and national government advisory bodies including the Hazardous Waste Reference Group, the Stockholm Stakeholders Reference Group, the National Industrial Chemicals Notification Assessment Scheme (NICNAS) Community Engagement Forum and NICNAS Strategic Consultative Committee and the Australian Pesticides and Veterinary Medicines Authority advisory committees.

Key Concerns

1. Diminished protections for public health and the environment

NTN has participated in the consultation process leading up to the drafting of the Bills and has made submissions on each consultation paper, attended workshops and, is a member of the NICNAS Strategic Consultative Committee (SCC).

Whilst we can say we have been consulted, the concerns we, and other community organisations, have consistently raised throughout this process, have not been heard and acted on.

In his Second Reading speech on the *Industrial Chemicals Bill 2017*, the Assistant Minister for Health, Dr Gillespie acknowledges that stakeholder views are still a long way apart: *“I think it’s fair to say that our stakeholders do not share the same views about the level of regulation that should be applied to industrial chemicals – with some favouring a more restrictive approach and others favouring a more deregulatory approach.”*

From the outset these reforms were not framed to respond to issues that concern the broader community. Nothing has been proposed to address the gross regulatory failure of the 30,000 plus ‘grandfathered’ and unassessed chemicals that have been on the Australian Inventory of Chemical Substances since the inception of the scheme. Some of those chemicals are in widespread use for new purposes where risks have barely been considered and exposures are high, such as in large-scale mining and fracking operations.

Very little has been proposed that will substantially improve the scheme’s performance in terms of delivering on its core objectives, which are to protect the health of the community and environment from the risks of industrial chemicals in Australia.

You need no other measure of the failure of the current approach to chemical regulation than the fact that babies are being born today with over 200 industrial chemical residues in their bodies before they take their first breath on planet earth. We are polluting the next generation before they are even born, setting them up for a lifetime of environmentally induced illnesses that will cost the public health system dearly into the future¹.

The effect of the proposed reforms is that a staggering 70-90% of new chemicals, self-assessed by industry as 'low risk' chemicals, will come into Australia without any regulatory scrutiny. To make matters even worse, the regulator will no longer even keep any records of these so called 'low-risk' chemicals coming into Australia.

When it comes to the management of industrial chemicals, history has repeatedly shown us that chemicals we were told are 'low risk' today, often turn out to be tomorrow's toxic chemical disasters, with the community, environment and economy bearing the costs. If the regulator is not even going to keep a record of 70-90% of new chemicals coming into Australia, how will it ever be able to act on future problems?

These reforms do not strike a balance, but seek to erode protections and establish what will largely be a deregulated approach to industrial chemicals in Australia, delivering on the coalition's key objective - to reduce red tape for industry, saving the \$62 billion/year industry \$23 million annually.

As chemical industry representatives have boasted during consultation meetings: '*we will be dancing on the tables when these reforms are implemented*', and we suspect it's not because they're genuinely excited about bringing low risk greener chemistry to the marketplace, but because they will be able to keep their toxic chemicals in the market place for longer with even less regulatory oversight.

2. A scheme with unending appetite for risk

While we support any improvements that will give the regulator some teeth, the wholesale shift in focus from pre-market assessment to post-market surveillance is concerning given our experience over decades trying to remove dangerous chemicals from the market once they are in common use. The framing and focus of these reforms illustrates that very problem.

We are not starting from the position that the current regulatory scheme is doing a great job at protecting us so that we can afford to free up regulation and experiment to see if deregulation achieves better protections for public and environmental health. While this approach may work in some industries, it has never worked for the chemical industry.

The chemical industry has an appalling track record of not acting in the best interests of people and the environment, so why would they start now? Just think about the costs and damage to human health and the environmental consequences of contamination from dioxins, PCBs, CFCs, asbestos, mercury, lead and the recently emerging disaster of widespread contamination in Australia from exposure to perfluorinated chemicals. These examples are just the tip of the iceberg.

No case has been made in the Explainer or Consultation documents that demonstrates how a shift to a deregulated, risk-based scheme will actually deliver safer chemistry in the marketplace and lead to better protection of people and the environment - *it is just assumed that it will*.

¹ <https://www.niehs.nih.gov/health/topics/population/children/index.cfm>

In reality, the only thing that would stand between an industry free-for-all for 70-90% of new chemicals, and the protection of community and environmental health, is a poorly resourced and sketchy post-market surveillance compliance program.

Proper assessment of risk is a function of a chemical's inherent toxicological hazards and the likelihood of exposure to it. When a chemical's use alters, so does the risk profile.

While we have seen some details in consultation papers, it is concerning that basic principles of what constitutes unacceptable chemical hazards will not be established in the primary legislation. It's as if there is an unending appetite for risk that will somehow be magically managed by an already flawed system of state-based risk management in Australia.

By contrast, in the world leading EU REACH chemical legislation the regulatory example is a mixture of hazard-based and risk-based elements. Chemicals of very high concern are identified based on their hazardous properties such as their potential for bioaccumulation or their cancer causing capacity. These chemicals are placed on a Candidate List. If there are safer, substitute chemicals available then Candidate List chemicals are not given authorization². This approach does result in safer chemistries in the marketplace, rather than an impossible list of risk mitigation measures that regulators will barely be equipped to implement and monitor compliance with.

While the proposals include new powers for the *“regulator to refuse the import or manufacture of industrial chemicals where the risks cannot be adequately managed (either by the regulator, or by other Australian risk managers such as environmental authorities)”*, this still leaves the door wide open for very high-risk chemicals to remain on the market.

Substantial powers and responsibilities are vested in the Executive Director. If there were clear criteria and principles established in the primary legislation that would guide these decisions, it would be somewhat comforting, but there is no guidance and no details.

If the government can ban the testing of cosmetic chemicals on animals, a move we whole-heartedly support in this package, then why can't it ban the ongoing experimentation on human animals with chemicals that are known to be highly hazardous? There must be a line in the sand that says we won't allow chemicals on the market with certain hazard characteristics if safer substitutes exist.

Why should the Australian population and environment continue to be exposed to known carcinogens or chemicals that accumulate in women's breast milk when there are safer alternatives? The combination of hazard and risk based regulation works in the EU where multi-national chemical corporations can comply. Why should Australians be asked to be at the mercy of the chemical industry to protect us from exposure to potentially dangerous chemicals?

The ongoing presence of hazardous chemicals contained within products is also highly problematic in the waste stream, an aspect of chemical management barely given any consideration in Australia. The scheme doesn't regulate products, just chemicals. If we are to move towards a zero waste society and a circular economy, we need strong protections and incentives to ensure hazardous chemicals which stop materials from being re-used or recycled, are swiftly removed from approval.

² <http://chemsec.org/hazard-vs-risk-what-is-best-practice-when-assessing-chemicals/>

3. Reduced transparency and public access to meaningful information

Despite the portrayal of reforms in this package as “*increasing transparency for the community through better availability of information on higher risk chemicals*” the net impact of the reforms will actually result in diminished access to information to the public.

The current system maintains a record of all chemicals permitted for use in Australia on a publically accessible Inventory. The proposal for the regulator to no longer keep records for 70-90% of exempted and reported new ‘low-risk’ chemicals introduced into Australia is in effect, a substantial loss of information and diminishment of transparency, one that will stymie access to vital information for researchers, regulators and the community.

Under the current system, if the regulator conducts a risk assessment of a chemical, the full risk assessment is available to the public, with appropriate protections of CBI.

What is proposed in these reforms is that the full risk assessment documents will no longer be accessible to the public, only a *statement* of the risk assessment will be linked to higher risk chemicals on the Inventory. Who decides what information the statement will provide? Why can't the public have access to the full risk assessment?

Consultation documents indicate the reforms propose the introduction of medium to high-risk chemicals via an, ‘international regulatory pathway’ for chemical introduction. Under the proposal these chemicals will not require assessment by NICNAS and would not be placed on the Inventory. This move effectively provides a back door for the easy introduction of medium to high-risk chemicals that would be subject to limited risk assessments. 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.

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.

4. Critical details left to delegated ‘rules’ without parliamentary oversight

It is understood that primary legislation cannot detail all the regulatory requirements and needs to remain adaptable to future information, but the total lack of detail regarding how the risk-based system would work is concerning. Substantial changes to the categorisation process could occur without full consideration by Parliament. It is unclear what the status of the delegated legislation is.