

Public Health Association of Australia

comments

for the Senate Committee on Community Affairs

Legislative Committee

Inquiry into the Industrial Chemicals Bill 2017

and related Bills

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Introduction

The Public Health Association of Australia appreciates the opportunity to meet with the Senate Community Affairs Legislation Committee.

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians.

The PHAA's Ecology and Environment Special Interest Group has followed for several years the regulatory reform moves by the Government to reduce the regulatory burden on industry by reducing the reporting requirements.

The PHAA is represented on the Strategic Consultative Committee for the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) as a community representative, and welcomes the opportunity to be informed about and comment on the regulatory procedures for industrial chemicals in Australia.

- The NICNAS Strategic Consultative Committee has four community representatives and four industry representatives and is chaired by the NICNAS Director.
- Dr Joe Hlubucek is the community representative nominated by the PHAA.

However, the PHAA remains concerned at the increased risks to human health and the environment by the proposed reductions in industry reporting, and the reduced transparency about industrial chemicals introduced into Australia by the changes, as outlined in our following comments.

PROPOSED REGULATION CHANGES IN THE INDUSTRIAL CHEMICALS BILL 2017 AND RELATED BILLS

The proposed changes in the legislation are aimed at reducing the reporting burden on industrial chemicals by introducing a new system for categorising industrial chemicals.

- According to the NICNAS Consultation Papers, there will be a 70% reduction in the number of new industrial chemicals that are subject to pre-market assessment, and approximately 99% of new industrial chemicals will no longer be subject to assessment by NICNAS.
- The Senate should note that the 70% reduction in pre-market assessment and notification planned for new industrial chemicals in Australia is a major reduction in requirements for pre-market notification and assessment for industrial chemicals in the USA, Canada and the EU.
- The PHAA and other community groups have continually expressed their concerns at the increased risks to human health and the environment from the proposed relaxation in the reporting requirements by industry for industrial chemicals which are imported into or manufactured in Australia.

PROPOSED REGULATION CHANGES IN THE INDUSTRIAL CHEMICALS BILL 2017 AND RELATED BILLS - continued

The following charts indicate the large range of chemicals, which under the proposed Exempted Chemicals categorisation, would be self-assessed by the importer or manufacturer, and not reported to the Regulator nor listed in any Government or public record. (From NICNAS Consultation Paper 5, June 2017)

Hazard Band	D				Assessed	
	C			Reported		
	B	Exempted		Reported		
	A					
		1	2	3	4	5
Exposure Band						

Figure 3 - Determining the introduction category for human health using the Hazard Band and Exposure Band

Hazard Band	E					
	D		Reported	Reported	Reported	Assessed
	C			Reported		
	B	Exempted				
	A					
	1	2	3	4	5	6
Exposure Band						

Figure 4 - Determining the introduction category for environment using the Hazard Band and Exposure Band

EXEMPTED CHEMICALS

Of particular concern is the new category for Exempted Chemicals.

- The current NICNAS regulation for a limited number of exempted chemicals is that the manufacturer or importer is required to provide NICNAS in the 28 days after the end of the registration year (31 August) an annual report which includes the name of the chemical and the volume.
- The proposed regulation for the expanded category of Exempted Chemicals would enable the introducer to self-assess the chemical for its risk to human health and the environment against guidelines and published data, and to introduce the chemical with no notification to the Regulator.
- There would be no record with the Government or for the public of the chemicals introduced into Australia under the Exempted Category.
- The only recording requirement for an introducer of an Exempted Chemical is to retain a record of the name and volume of the introduced industrial chemical, in case it is required to produce the record as part of a random post-market survey.
- The above details are not in the primary legislation, but planned for the delegated legislation which would not require parliamentary oversight.

RISKS WITH UNDER REPORTING FOR INDUSTRIAL CHEMICALS

- In the USA, under its Toxic Substances Control Act (TSCA), the US Environmental Protection Agency (EPA) is mandated to use the least burdensome method to reduce chemical risk to reasonable levels, taking into account the benefits provided.
- However, as a result of the limitations of the TSCA, US States have introduced their own legislation leading to 71 specific chemical regulation laws being passed in 18 different states since 2003. *(Markell DL. An overview of TSCA, its history and key underlying assumptions, and its place in environmental regulation. Washington University Journal of Law and Policy. 2010;32:333-75)*
- Current NICNAS post-market compliance checks show that there is some under-reporting for new industrial chemicals and that there are importers and manufacturers of industrial chemicals who are not aware of their reporting requirements.
 - This can only increase with reduced reporting requirements.



The PHAA is disappointed that the Bill does not clarify the reduced reporting requirements planned for Exempted Chemicals.

In addition, the statement in the Table included in the Explanatory Memorandum for Clause 23 in the Bill outlining the main differences between the categories is unclear whether the annual declaration for Exempted Introductions is a necessary annual notification to the Regulator, or simply retained as a record in case of a random post-market compliance check.

	Exempted introductions	Reported introductions	Assessed introductions	Listed introductions
Continuing obligations	Annual declaration of whether chemicals have been introduced in this category	Annual declaration to confirm all reported introductions made in the relevant registration year	Post-assessment information obligations	Post-assessment information obligations (if the chemical on the Inventory has been assessed or evaluated by AICIS)
Monitoring by AICIS	Post-market monitoring	Post-market monitoring	Post-market monitoring	Post-market monitoring

RISKS WITH UNDER REPORTING FOR NANOMATERIALS

- There are many new classes of chemicals, including nanomaterials and polymers, which deserve special regulatory consideration for health risks to humans, animals and the environment, and should not be categorised as very low-risk or Exempted Chemicals.
- Nanomaterials are materials with a size range of 1 – 100 nanometres, which can be compared with the diameter of human hair at 50,000 – 100,000 nanometres.
- Nanomaterials are designed to penetrate the skin and even deliver active biomolecules to intracellular sites.
 - No industrial chemical containing nanomaterials should be categorised as very low-risk for human, animals or the environment – *and be allowed to be self-assessed by industry as an Exempted Chemical and its introduction not reported.*

35,000 UNASSESSED CHEMICALS ON THE AUSTRALIAN INVENTORY OF INDUSTRIAL CHEMICALS (AICS)

There are nearly 35,000 chemicals on the AICS that have not been assessed for their health risks. They were introduced prior to the establishment of NICNAS in 1989.

In 2012 NICNAS implemented the IMAP (Inventory Multi-tiered Assessment and Prioritisation) process following a review and Productivity Commission report to accelerate the assessment of chemicals listed on the AICS. By the end of December 2015, the IMAP process had made 2559 recommendations for 2000 unique chemicals.

The draft Bill in Part 4, Division 3, does not commit to a continuation of the successfully trialled IMAP process which has been shown to provide a flexible and transparent approach to prioritising the large number of unassessed chemicals on the AICS.

The Senate is asked to ensure that the legislation will include a requirement for the continuation of the IMAP process with proper funding.