



Senate Community Affairs Legislation Committee

Inquiry into the Industrial Chemicals Bill 2017 & related Bills

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Contact:

Andrew Dettmer, National President

The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 75,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry and other key industries such as Defence, Oil and Construction.

The AMWU represents industrial workers, trades people, technicians and administrative personnel within both private and public sector employment (for example civilian employees in the Department of Defence).

The AMWU welcomes the opportunity to make this brief submission to the Senate Community Affairs Legislation Committee. The AMWU represents workers research and development and the use of industrial chemicals.

Our core concerns relate the design of the system, the undue haste and lack of detail that accompanies the Bill.

Undue haste

The 2015 Federal Budget announced these reforms yet the current the time frames severely restrict the ability of the public and parliamentarians to scrutinise the Bill. The second reading speech was on the 1st June, submissions to the Senate Committee are due on 12th June [a public holiday for much of the country] and the Committee's reporting date is 13th June 2017. This is not urgent legislation – it should be open to proper scrutiny from the Parliament and the community.

Design of the system:

The current system is "user pays" which will continue under the Industrial Chemicals Bill 2017 [the Bill]. Such systems encourage any regulated industry to demand services from the regulator. This puts the regulator at risk of "industry capture". At a minimum such systems require structures to guard against such outcomes. There are no proposals in the Bill which mitigate against the risk of "industry capture".

The lack of detail in the Bill or Explanatory Memorandum [EM]

During 2013 Regulatory Impact Statement process the union movement submitted the following:

The ACTU supports reforming NICNAS in order to ensure that:

- *maximum effort and resources are focussed on chemicals requiring more attention;*
- *time and resources are not taken up with complex assessments of no/low risk chemicals;*
- *unnecessary duplication and complexities in the system are removed;*
- *maximum use is made of comparable international assessments;*
- *where NICNAS assessments recommend specific controls (in particular workplace controls), these are implemented without delay;*

- *assessments of the thousands of ‘existing’ chemicals on the AICS continue to be carried out in line with the IMAP process, recently implemented. It is of increasing concern that many thousands of unassessed chemicals remain in use;*
- *NICNAS has the necessary tools, for example different levels/types of assessments, to effectively and efficiently carry out its functions; and*
- *A system remains in place so that there is a register of all new chemicals introduced in Australia.*¹

The Bill and the EM adequately address some of our criteria e.g.

- *maximum effort and resources are focussed on chemicals requiring more attention;*
- *unnecessary duplication and complexities in the system are removed; e.g. the basic concept of risk matrix for categorization in Part 3*
- *maximum use is made of comparable international assessments; e.g. Section 27*
- *NICNAS has the necessary tools, for example different levels/types of assessments, to effectively and efficiently carry out its functions – e.g. Part 7 of the Bill*

Unfortunately, the Bill and the accompanying Explanatory Memorandum contain absolutely no detail on the categorization and subsequent levels of assessment or reporting of introduced chemicals. The detail is relegated to “rules” for which there is not even a broad outline.

We acknowledge that over the last 24 months NICNAS Consultation Papers have outlined the proposed categorization and assessment but there is no indication in this Bill or EM that the government will implement the outcomes of the Consultation Papers 1-5 [CP5 was only released a week ago].

The Bill or the EM outlines processes but provides no detail on the “what”. A defining feature of the Bill is found in Part 3 but the Bill/EM contains no information or detail on the matrix to be applied for the categorisation of chemicals as Exempted /Reported /Assessed /Listed.

Part 4 creates a process for Evaluations Initiated by the Executive Director. The EM explains that this will replace the current IMAP² and the PEC processes. The IMAP process addresses a long standing deficiency in the information contained on AICS. The NICNAS work has been rigorous and overdue. But, there is nothing in the EM or Bill that refers to a continuing structured and comprehensive analysis of AICS. Information of this nature in the EM would give the public some reassurance that this work, albeit in a different form, will continue. Again, the Bill and the EM informs Parliament of the processes but provides no information on the “what”. This is a retrograde step.

¹ Options for reforming the National Industrial Chemicals Notification and Assessment Scheme, Regulation Impact Statement, ACTU Submission August 2013

² *By the end of December 2015, 2559 recommendations have been made for 2000 unique chemicals. The majority of recommendations have been made to Safe Work Australia (SWA) (62.4 %) and to the Chemicals Scheduling Delegate for the Poisons Standard (13.5 %) [NICNAS report on IMAP]. This excellent result demonstrates the importance of the IMAP process. This work must be continued.*

Part 7 of the Bill grants increased enforcement powers to NICNAS. These are strongly supported. However, there does not appear to be any mechanism to address one of the essential flaws of the Australian chemical regulation system, the lack of uptake of NICNAS assessments by ‘risk managers’.

During the consultation phase NICNAS provided estimates on post market auditing – again there is no information provided in the EM on what actual monitoring will occur. If the “reforms” are to allow increased focus on “risky” chemicals, it is incumbent on the government to outline how this will be achieved – otherwise it appears to be a matter of “faith/trust” in the processes.

The Bill invests substantial powers and responsibilities in the Executive Director. These powers are necessary and appropriate however it makes the agency and the legislation, and their purpose, vulnerable to the correct appointment of one individual. This highlights a flaw in the mechanisms allowed for in the Bill eg if the Executive Director fails to use the provisions of Part 4 there are no governance arrangements that could rectify such a problem.

Concerns re the lack of government oversight of significant numbers of chemicals

According to 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. This will result in significant cost savings for industry. This shift towards self-regulation for large quantities of chemicals is not supported.

The AMWU submits that the Exempted category must require the introducer to provide the name, CAS number and volume to NICNAS to ensure transparency. Our future knowledge about chemical hazards will change and the AICIS must have the ability to investigate and track those chemicals – a good example might be phthalates.

Delegated legislation

It is acknowledged that primary legislation need not detail all the regulatory requirements. However the total absence of information makes possible considerable change, for example, to the categorisation process, without any consideration by Parliament. Additionally, the status of the delegated legislation is not contained in the Bill/EM.

Issues raised in response to Consultation Papers 1-4

The AMWU is not clear that these concerns, raised in our responses to the Consultation Paper have been addressed. And requests Senate Committee explore these concerns:

- whether under the proposals an introducer will be able to place in the Reported Category any high/medium risk chemical that has been risk assessed by a trusted

international regulator. It is appreciated that the international pathway must not be used as a mechanism for AICS listing but under the current proposals there will be no public record of these chemicals. It is essential that the international pathway does not become a system to introduce chemicals that would normally have been fully assessed by NICNAS and then automatically entered on AICS.

- are there unintended additional potential loop hole exists for commercial evaluation authorisations? Commercial evaluations can exist for four years and NICNAS would be able to conduct post market monitoring. However, the impediments to prohibit the commercial evaluations from broader usage are limited to the post market monitoring. The extent of post market monitoring will be resource dependant. Given the inevitable reduction in resources available to NICNAS [decreased number of assessments], this mechanism is precarious.
- the evidence provided by NICNAS in CP3 supported our concerns about post market monitoring – some sections of industry “don’t do the right thing”. The shift to a post market system widens the “space” for those “not doing the right thing”. It is an approach which increases the likelihood of failures to meet the community expectation that chemicals for use and sale in this country have been assessed as safe

The AMWU maintains our concerns, initially addressed by the ACTU in 2013.

- *The failure to include mechanisms to ensure that where NICNAS assessments recommend specific controls (in particular workplace controls), these are implemented without delay; we are unable to find any evidence in the Bill or EM that addresses what happens when “risk managers” fail to implement NICNAS recommendations. The lack of uptake of the work of NICNAS by other regulators remains a fundamental concern. This is once again a lost opportunity.*
- *The lack of information before Parliament that assessments of the thousands of ‘existing’ chemicals on the AICS continue to be carried out in line with the IMAP process, recently implemented.³ It is of increasing concern that many thousands of unassessed chemicals remain in use; there is no reference in Part 5 to any system to replace IMAP, only a general reference to ED initiated assessments. There is nothing in the Bill/EM that can reassure the public that such essential work will occur.*
- *The introduction of a system that will not include register of all new chemicals introduced in Australia. The Exempted category is totally reliant on the private sector and there will be no public register of those chemicals.*

Summary

The measure of performance of a regulatory regime like NICNAS is the protection of human health and the environment. NICNAS has an excellent history of providing high quality information to other regulators. Any failures of the chemical regulatory system have not been NICNAS but the risk managers’ e.g. Fiskville Victoria⁴ or failure to change exposure standards⁵.

⁴ Inquiry into the CFA Training College at Fiskville Final Report, Parliament of Victoria 2016

⁵ PEC Report Formaldehyde 2006 recommended a reduction in the workplace exposure standard – 11 years later this has not be adopted by SWA or any H&S regulator.

If adopted the Bill will increase the reliance on risk managers – this is not acceptable and is likely to lead to poor health and environmental outcomes. The problem is made worse in Australia as we do not have a proper adverse outcomes system or regular monitoring of the Australian population for chemical burden. This means any such outcomes are likely to be hidden – a perpetuation of the “don’t look and you won’t find” approach.

The AMWU supports the reduction in oversight for chemicals such as polymers of low concern but the focus on reduction in red tape is potentially opening avenues for the introduction of chemicals without careful oversight by AICIS. The introduction of such a broad group lack as exempted chemicals without any government oversight or public listing may well be a change that will haunt future generations.

The Federal government is expending considerable resources and effort in “relaxing’ the regulatory environment for the chemical industry with little regard to the often persistent and adverse outcomes on human and environmental health.

As agreed at the World Summit on Sustainable Development in 2002 sound chemical management is a key component in the transition to more sustainable industrial economies. These regulatory changes may well not promote such an approach.⁶

⁶ Occupational Health & Safety > Australian & New Zealand Journal of Health, Safety and Environment > 2013 Volume 29(4) > HSE BRIEF > [¶29-461]
Improving chemical policy and regulation — the objective is safer chemicals, not simply safer exposures