



Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Email: ec.sen@aph.gov.au

Dear Madam/Sir

Accord is pleased to provide this submission to the Senate Environment and Communications Legislation Committee Inquiry into Industrial Chemicals Environmental Management (Register) Bills

Summary of Accord's position on the Bills:

- 1) Accord supports the introduction of the governing legislation to establish this new framework for a nationally uniform approach for the environmental risk management of industrial chemicals.
- 2) However, we highlight to the Committee the regrettably poor timing for this significant new regulatory regime during this time of pandemic, including industry concerns about costs and other administrative burdens as this new regulatory regime moves into implementation.
- 3) Our organisation has been actively engaged in discussions on this specific policy since its earliest inceptions under the NChem proposals, commenced back in 2005. We supported the 2008 Productivity Commission recommendation that "*an environmental risk management standards body should be established*". However, this support was predicated on the adoption of other streamlining and tangible reform recommendations for chemicals regulation also proposed by the Productivity Commission.
- 4) Since the advent early last year of the COVID-19 pandemic, businesses within our industry have been facing an unprecedented range of unforeseen challenges. Amid this "new normal" of economic and social disruption, our member businesses are presently having to come to grips with the complex new regulatory rules established via the related *Industrial Chemicals Act 2019*. This is proving to be a costly and time-consuming exercise for many businesses. For example, some firms last year experienced a 60% increase in their annual company registration fee charged by the Australian Industrial Chemicals Introduction Scheme (AICIS).
- 5) There is legitimate concern among impacted businesses that the new regulatory regime established via these Bills will add significant costs and administrative burden if not implemented in a considered and sensible manner.
- 6) Related to this, Accord notes that while our industry had an opportunity to review an exposure draft of the primary *Industrial Chemicals Environmental Management (Register) Bill 2020*, we were surprised to see three Bills imposing arrangements for the levying of charges bundled together with the primary ICERM Bill.
- 7) Accord notes that the Explanatory Memorandum accompanying the three charges Bills states that a "nil amount" option may be applied. In the current economic circumstances, this would seem to be the appropriate charge to apply for the early stages of this new regulatory regime.
- 8) Appropriate Cost-Recovery arrangements into the future will also require careful consideration. Unlike the model used for AICIS (or the TGA or APVMA), these national standards decisions will function more like chemicals scheduling decisions within the public health portfolio. This means it will often be difficult to readily identify a beneficiary (or responsible) company for risk management. An appropriate equity funding model will be needed to ensure low-risk businesses are not hit with charges that relate to high-risk, high-consequence chemicals/operations. Ideally some "public good" funding from government/s would be part of the final funding mix for this framework.
- 9) Industry will remain vigilant on issues related to the subsequent regulations/rules to ensure these will deliver a framework that:
 - is effective, efficient and workable, and does not impose undue or inequitable costs on low-risk businesses,
 - maintains proper risk proportionality by targeting higher risk, environmentally consequential chemicals, not those of low risk and thereby little environmental consequence,
 - avoids unnecessary red tape, administrative burden and costs on lower risk chemicals and the introducers and users of such low-risk chemicals,
 - interacts with the AICIS system of regulating industrial chemicals in a workable and transparent manner that avoids duplication and unnecessary regulatory burdens,
 - maintains an evidence-based approach to decision making guided by the scientific consensus of credible experts,
 - has appropriate and transparent governance arrangements, including Administrative Appeals processes.
- 10) We support the ICERM Bill 2020 being passed as written. Accord would also welcome further consultation with the Senate when the final regulations/rules for this new regulatory regime are tabled as disallowable instruments.

About us:

Accord is the national industry association representing manufacturers and marketers of formulated hygiene, personal care and specialty products, their raw material suppliers, and service providers. A list of our members is provided as Attachment 1.

By way of further background, Accord member companies make and/or market fast-moving consumer and commercial business-to-business goods including hygiene, personal care and specialty products, sunscreens, food contact sanitisers, industrial and agricultural sanitisers, household pesticides, disinfectants and specialty commercial products. A summary of the benefits of our industry's innovative products is provided as Attachment 2.

Member companies include large global consumer product manufacturers as well as many small, dynamic Australian-owned businesses. Fifty-five percent of our members are medium-sized companies with up to 200 employees.

Additional to Accord's role as an industry advocate, we promote sustainability and product safety via community education websites like *Hygiene for Health* (www.hygieneforhealth.org.au), *Washwise* (www.washwise.org.au), *Wipesmart* (www.wipesmart.org.au) and *Sunsible* (www.sunsible.org.au). And we manage key environmental programs like the *BeadRecede* campaign for the phase out of solid plastic microbeads in rinse-off cosmetic products and the *Recognised* environmental labelling scheme for commercial and industrial cleaning products.

Our cosmetics industry charity, *Look Good Feel Better* (www.lgfb.org.au), continues to improve the wellbeing and confidence of Australians undergoing cancer treatment, reaching close to 7000 people nationally in 2020. This charity has been helping Australian cancer patients for more than 30 years.

Accord's comments to the Committee:

- ICERM Bill 2020 – the primary framework Bill

As noted in the summary above of our position on these Bills under point (6), we were pleased to be able to provide a submission to the Department on 21 February 2020 responding to the Exposure Draft version of the Industrial Chemicals Environmental Management (Register) Bill (hereafter ICEMR Bill).

A copy of our earlier submission is included as Attachment 3.

It is noted that the Bill tabled in the Parliament appears to have addressed some of the concerns we raised previously.

Additionally, Accord has welcomed the professional and informative engagement received from relevant Departmental officers in discussing with us questions and concerns we raised in our February submission.

Via these discussions with the Department, we have a better understanding of the rationale for the Environment Minister to be the primary decision-maker.

However, the role of the Executive Director of AICIS (a Health portfolio statutory officer) within the governance arrangements for this new regulatory regime under the Environment portfolio continues to generate some industry confusion and concern.

It would be helpful if the exact operational and governance arrangements for involving the AICIS Executive Director within the new risk management regulatory framework could be clarified via this Inquiry.

This will help all stakeholders better understand how any potential management and governance conflicts between the two portfolios (Environment and Health) and the two pieces of primary legislation (IC Act 2019 and ICEMR Bill 2020) are intended to be dealt with or simply avoided.

As it stands, the AICIS Executive Director currently "reports" to one minister in the Health portfolio. This Bill will see the role expanded to report, as needed, to a second minister in the environment portfolio.

This strong interaction between the new AICIS regulatory regime and that to be put in place by the ICEMR Bill 2020 is not a matter that should be simply brushed over. Especially as businesses that introduce and use chemicals are currently coming to grips with many new complexities and unintended consequences within the new AICIS rules.

Some teething problems Accord member companies have recently been reporting with the new AICIS scheme include:

- Lack of clarity around new requirements;
- Delayed and sometimes inconsistent responses from AICIS staff to specific queries;
- Lack of training. No formal training by AICIS has been offered to stakeholders to date. There is considerable information on the AICIS website, but it is extremely complex and difficult to piece together, especially for smaller businesses that are less resourced for dealing with such matters;
- Limitations of the “business services portal” IT system through which introducers primarily interact with AICIS; the portal is currently considered not fit-for-purpose. Some basic functions such as changing/updating information require separate direct email requests that AICIS staff then need to action individually;
- Confusion over standard ingredient nomenclature for cosmetics; and,
- Weeks of additional red tape work to transition previously exempted low-risk chemicals into the scheme’s new paperwork requirements.

While Accord supports the passage of the framework ICEMR Bill 2020 legislation, we caution that our industry is already struggling with the new AICIS scheme requirements and that therefore implementation of the regulations/rules for this new regulatory regime needs to be considered, sensible and provide appropriate transition periods.

Additional to the need for appropriate transition periods is the need for sensible prioritising with the new regulatory regime implemented in a stepwise fashion that puts early focus on known high-risk, high consequence chemicals, e.g. those that are subject of international treaties. This would seem a sensible approach to put the environmental risk management framework on a sound footing and avoid undue cost burdens on low-risk businesses introducing or using low-risk chemicals.

It is also likely not widely understood that the Environment portfolio (DAWE) already provides outsourced functions, at considerable cost, to AICIS for the performance of environmental risk assessment on introduced industrial chemicals. These costs are of course fully cost-recovered from industry businesses under the AICIS scheme. Here, for example, is a table from the AICIS Cost Recovery Implementation Statement (CRIS) showing the existing involvement of DAWE in the AICIS scheme:

Table 2 - AICIS estimated cost base, 2020-21 to 2023-24 (\$'000)

Expenses	2020-21	2021-22	2022-23	2023-24
Employee and contractor expenditure	11,984	12,516	13,024	13,303
Non-employee expenses	9,292	9,922	10,423	10,702
Supplier (including DAWE)	7,350	7,980	8,481	8,760
Depreciation	1,942	1,942	1,942	1,942
Allocation to operating reserve^[1]	561	572	595	594
Total	21,837	23,010	24,042	24,599

The two schemes will become further enmeshed under the new regime established by the ICEMR Bill 2020. While this in itself may not be a problem *per se*, the need for appropriate transparency and disclosure regarding

^[1] An operating reserve is maintained with 3 months operating expense to manage fluctuations in revenue and expense relating to regulatory activity.

costing arrangements becomes increasingly important as is the need to avoid duplication and other administrative inefficiencies.

In our February submission to the Exposure Draft version of the Bill we made the following point: *“There is always a concern that the ‘devil is in the details’ and even when primary legislation, such as this Bill, is mostly sound and workable, subsequent Rules may contain hidden flaws and unintended consequences.”*

For this reason and based on the current industry experience with the new AICIS rules, we would encourage early engagement from DAWE with the entire regulated industry on the proposed regulations/rules. Additionally, Accord would welcome further engagement with the Senate when the final regulations/rules are tabled as disallowable instruments.

- ICERM Charges Bills – General, Customs and Excise

As noted in the summary above of our position on these Bills under points (6), (7) and (8), we were surprised to see three cost-recovery funding Bills introduced with the primary Bill.

We noted in our February 2020 submission on the Exposure Draft version of the Bill that there had been no formal discussions on how the new regime (called at that time the “National Standard”) would be funded: *“there has been no tangible policy discussion with the regulated industry on how the Standard will be funded, whether costs will be imposed on businesses and/or the overall industry, and the likely level of funding needed for the operation of the Standard. Industry will be critically evaluating such arrangements, when finally revealed, against the red tape and compliance cost goals of the Government.”*

To be blunt, there is now a legitimate concern across the many businesses Accord represents that supporting these Bills is the equivalent of handing across a blank cheque for the DAWE to fill out as it sees fit.

There is very little transparency at this stage about the estimated costs relating to various new functions, staffing and other arrangements that will be put in place by the ICERM Bill 2020. Industry businesses were surprised and dumbfounded by the percentage of increases in charges introduced by the AICIS scheme in August last year, in the height of the pandemic. For example, some annual company registration costs under AICIS have risen from the previous \$24,640 per annum in 2019–20 to \$40,000 for 2020–21, a 62% increase. This applies to SMEs where the value of industrial chemicals introduced in the previous financial year was \$5m or greater.

Cost recovery processes do not have to work so poorly. In contrast to the way AICIS charges have increased, Accord applauds the transparent and consultative way in which the Therapeutic Goods Administration under the leadership of Adj. Prof. John Skeritt goes about setting its annual charges and fees. Though Accord notes that the responsible minister for AICIS has raised cost-recovery arrangements with this agency and it is our understanding that a review will take place later this year.

Hence, there is a wariness and lack of trust about the potential cost imposts facing industry businesses from this new regulatory regime, especially as it now appears to be inextricably linked to the AICIS scheme. These business concerns about looming costs and charges are, of course, magnified during this time of great disruption and uncertainty due to the pandemic and its substantial economic impacts.

However, we note that in the Explanatory Memorandum for these Bills it is explained that the charges can be set to “nil amount”. And this is exactly what Accord asks for in the foreseeable period, as businesses continue to weather the pandemic.

Ideally, there should also be thorough and meaningful consultation with industry on the financials and cost-recovery arrangements for this new regulatory regime. It would be helpful if, via this Inquiry, the Committee could obtain commitments for this to occur.

As stated in point (8) of Accord's position on the Bill, careful consideration also needs to be given to the eventual model for cost-recovery.

It is therefore concerning that the other Bill accompanying this package, the Industrial Chemicals Legislation Amendment Bill 2020, could be read to simplistically associate charges for this new regime as a seemingly straightforward addition to the standard annual company registration charge levied by AICIS.

Accord strongly cautions that the current model for AICIS registration charging, which is based on an antiquated calculation of manufacturing use of chemicals based on ingredient value, along with a factoring in of company size, is a very poor model for calculating cost-recovery for this new regime.

Environmental risk is different to public health risk—and that is why this legislation is being introduced.

Environmental risks are often more site-specific or operationally based, with some activities (e.g. mining) potentially having a much larger environmental footprint than others (e.g. making cosmetics).

There is therefore a very tangible equity risk that adopting the wrong model will unacceptably place cost imposts on low-risk businesses that are making and selling environmentally low-risk products. This would be a very poor policy outcome.

Conclusion and recommendations:

Accord appreciates the opportunity to respond to this Inquiry and would welcome the Committee obtaining further clarity on key issues relating to:

- the role of the AICIS Executive Director in this new regulatory framework and how this will be managed,
- an appropriate transition approach to implementing the new regulatory regime that takes into account the regrettably poor timing due to pandemic uncertainty and impacts on industry,
- commitments to setting “nil amount” for a reasonable period within the charges Bills bundled together with the ICEMR Bill 2020,
- commitments to meaningful consultation on cost-recovery arrangements, including development of a model that is fit-for-purpose for this framework as opposed to simply using the current AICIS model.

Accord supports the Bills as written and recommends the Parliament pass them.

29 January 2021

Accord contacts in relation to this submission:

Mr Craig Brock, Policy & Public Affairs Director

Phone –

Mobile –

Email –

Members

Consumer and Personal Care

Advanced Skin Technology Pty Ltd	Kimberly-Clark Australia
Amway of Australia Pty Ltd	La Biosthetique Australia
Beiersdorf Australia Ltd	La Prairie Group
Chanel Australia	L'OCCITANE Australia Pty Ltd
Clarins Group/Trimex Pty Ltd	L'Oréal Australia Pty Ltd
Clorox Australia Pty Ltd	Luxasia Oceania Pty Ltd
Colgate-Palmolive Pty Ltd	LVMH Perfumes and Cosmetics
Combe Asia-Pacific Pty Ltd	Muk Haircare Pty Ltd
Cosimer Pty Ltd	Natural Australian Kulture Pty Ltd
Coty Australia Pty Limited	Nutrimetics Australia
De Lorenzo Hair & Cosmetic Research Pty Ltd	Panamex Group
Edgewell Personal Care	Pierre Fabre Australia Pty Ltd
Emeis Cosmetics Pty Ltd	Procter & Gamble Australia Pty Ltd
Estée Lauder Australia	Puig Oceania Pty Ltd
Frostbland Pty Ltd	PZ Cussons Australia Pty Ltd
Givaudan Australia Pty Ltd	RB
GlaxoSmithKline Consumer Healthcare	Revlon & Elizabeth Arden Australia
Hairjamm Pty Ltd	SC Johnson & Son Pty Ltd
Helios Health & Beauty Pty Ltd	Shiseido Asia Pacific Pte Ltd
Inglot Cosmetics Pty Ltd	Skin Health Pty Ltd
Integria Healthcare (Aus) Pty Ltd	The Heat Group Pty Ltd
International Hair Cosmetics	Ultraceuticals
Johnson & Johnson Pacific	Unilever Australasia
KAO Australia Pty Ltd	Weleda Australia Pty Ltd
Keune Australia	

Commercial/Hygiene & Specialty Products

Albright & Wilson (Aust) Ltd	Lab 6 Pty Ltd
BASF	Novozymes Australia Pty Ltd
BP Castrol Australia Pty Ltd	Nowchem
Brenntag Australia Pty Ltd	Peerless JAL Pty Ltd
Castle Chemicals Pty Ltd	Recochem Inc
Crisp Solutions	SC Johnson Professional
Dalby Bio Refinery Ltd	Schulke Australia Pty Ltd
Dominant (Australia) Pty Ltd	Solvay Interlox Pty Ltd
Dow Chemical (Australia) Pty Ltd	Sopura Australia Pty Ltd
Ecolab Pty Limited	Symbio Australia Pty Ltd
Ensign Laboratories	Tasman Chemicals Pty Ltd
Eucalip Bio-Chemical Group Pty Ltd	Thor Specialties Pty Limited
Freudenberg Household Products Pty Ltd	True Blue Chemicals Pty Ltd
Indorama Ventures Oxides Australia Pty Limited	Whiteley Corporation Pty Ltd

Associate Members

Graphic Design and Creative

Active Display Group

Ident Pty Ltd

Look Print

Legal and Business Management

FCB Lawyers

HWL Ebsworth Lawyers

K&L Gates

Regulatory and Technical Consultants

Clare Martin & Associates Pty Ltd

Competitive Advantage

Davoren Environmental Pty Ltd

Delphic HSE

Engel, Hellyer & Partners Pty Ltd

International Cosmetics & Regulatory Specialists, LLC

Merieux Nutrisciences

RFA Regulatory Affairs Pty Ltd

Seren Consulting Pty Ltd

Siemens Australia

Steinberg and Associates

Sue Akeroyd & Associates

Tudor Chem Pty Ltd

UL International Australia Pty Ltd

Specialist Laboratories and Testing

D.Lab Solutions Pty Ltd

Eurofins ams Laboratories Pty Ltd

Eurofins | Dermatest Pty Ltd

Innovation Partners

Monash University

October 2020



Attachment 2

Benefits of the products Accord members make and market

Our sector's products play a vital role in:

- Safeguarding public health: Maintaining essential standards of hygiene and sanitation in institutions, hospitality, manufacturing, public places, agriculture and at home—including supporting the fight against the spread of COVID-19 infection and other transmissible illnesses with good hygiene.
- Promoting personal well-being: Helping people keep clean, healthy and shielded from harmful effects of the environment.
- Maintaining comfortable homes: Enabling people to keep their everyday surroundings clean and inviting.
- Enhancing quality of life: Giving people greater personal freedom through time- and effort saving technologies.
- Boosting confidence and emotional wellbeing: Providing opportunities for self-expression, individuality and pampering.
- Keeping the wheels of commerce and industry turning: Fulfilling specialised uses in industry, institutions and agriculture.

Accord's Consumer, Cosmetic and Personal Care Member companies supply products for personal and household use. These include the following important products

- cleaning and hygiene products e.g. soaps and detergents for personal hygiene, laundry, hard surfaces, dishwashing, upholstery and automobiles; disinfectants and sanitisers
- personal care/cosmetic products e.g. sun protection and sun care, oral care, hair care, skin care, nail care, deodorants, tampons, wet wipes, colour cosmetics, perfumes & colognes and depilatories
- other specialty products such as polishes, adhesives and pest control.

Accord's Commercial Member companies supply and manufacture hygiene and specialty products for a broad range of healthcare, janitorial, educational, hospitality, manufacturing and agricultural applications. These include:

- cleaning products, disinfectants and sanitisers
- specialty products such as industrial lubricants, water treatment chemicals, food processing aids, building maintenance products, deodorisers, enzymes and dust control sprays
- raw materials/ingredients for the cleaning, hygiene and specialty products industry

Attachment 3



Australian Government
Department of the Environment

COVER SHEET FOR SUBMISSIONS

National Standard for environmental risk management of industrial chemicals

Please complete all fields in this cover sheet. Completed covers sheets should be included with your response.

As part of your submission, the Department needs to collect some personal information* in case we need to contact you should further information or clarification be required on your response. If you are making a submission on behalf of a group or organisation, please provide contact information for one member of your organisation.

The Department intends to publish your response in full, including any personal information provided in your response, on the Department's website. The Department may also circulate your response to State and Territory agencies for the purposes of developing the National Standard for environmental risk management of industrial chemicals.

A complete description of the terms governing participation in this consultation process is available from the Department's website at <http://www.environment.gov.au/protection/chemicals-management/national-standard>.

CONTACT DETAILS (required)			
Organisation (if applicable)		Accord Australasia (Hygiene, Cosmetic and Specialty Products Industry)	
Title	Mr	Name (required)	Craig Brock
Postal address (required)		PO Box 290 BROADWAY NSW 2007	
Email address (required)			
Telephone number (optional)			
TERMS OF PARTICIPATION and CONSENT TO USE YOUR PERSONAL INFORMATION (required)			
I have read the Terms of Participation, including the privacy notice included in the Terms of Participation. I understand and agree to the Terms of Participation.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
ANONYMITY (if applicable)			
Please mark this box if you want your submission to be treated anonymously.			<input type="checkbox"/>
CONFIDENTIALITY AND PUBLICATION OF YOUR RESPONSE (if applicable)			
Please mark this box if your submission contains information you consider is confidential information. If so, please specify the confidential information in your response and provide a statement outlining why you consider this information should remain confidential. Please provide two versions of your response, one which has the confidential information removed.			<input type="checkbox"/>
INTELLECTUAL PROPERTY (required)			
In relation to intellectual property rights in my response, I confirm that where I am the owner of those rights, I agree to grant; and where a third party is the owner of those rights, I have procured the grant of a licence for the Commonwealth to use those intellectual property rights on the terms set out in the Terms of Participation.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No



Australian Government
Department of the Environment

THIRD PARTY PERSONAL INFORMATION (if applicable)

If your submission contains personal information of a third party, does the third party consent to the proposed use and disclosure of their personal information?

If the third party does not consent, please de-identify or otherwise remove the third party's personal information from your response.

☐

I have obtained
third party's
consent

***NOTE:** For the definition of 'personal information' applied here, see the Terms of Participation at <http://www.environment.gov.au/protection/chemicals-management/national-standard>. The Department will store and use the personal information collected during this consultation process in a manner consistent with its obligations under the Privacy Act 1988 (Cth) and the Department's privacy policy.

A copy of the Department's privacy policy is available at: <http://environment.gov.au/privacy-policy>.

HOW TO SUBMIT YOUR SUBMISSION

Please return the cover sheet and your submission by email (preferred option) or post to the address below.

Email: chemicals.management@environment.gov.au

Post: Environment Health - Strategic Policy Section
Environment Standards Division
Department of the Environment
GPO Box 787
Canberra, ACT 2601



Sound Management of Chemicals Section
Chemicals Management Branch
Department of the Agriculture, Water Resources and the Environment
GPO Box 787
CANBERRA ACT 2601

Accord Submission: Exposure Draft of *Industrial Chemicals Environmental Management (Register) Bill 2020*

1. Introduction to Accord

Accord Australasia is the national industry association for manufacturers/suppliers of formulated hygiene, personal care and specialty products - a key industry sector within the Australian economy, measured by accounting firm EY as the 17th largest sector in Australia. Our industry's products are important for Australian manufacturing and business. Accord's 100-plus member companies range from smaller Australian-owned family businesses to the local operations of large consumer brand corporations. A full list of our members is attached.

Our organisation is a forward-looking industry body. We represent an innovative, responsible industry that is serious about addressing environmental sustainability and community wellbeing in an evidence-based and economically sensible manner. Numerous industry initiatives aimed at making tangible environmental and social contributions have been successfully delivered via Accord, including:

- *Look Good Feel Better* – a flagship wellbeing program for people undergoing cancer treatment established in 1990 and now offered in 180 locations across the nation. More than 130,000 Australians have participated in the program since its inception (see <https://lgfb.org.au>).
- *Washwise* laundry sustainability advice website, related to this Accord administers the NP logo scheme, which helped reduce phosphorus levels in laundry detergents in Australia to negligible levels (see <https://washwise.org.au>).
- *Sunsible* website on how to stay 'sun safe' through proper sunscreen use – promoting UV-radiation protection messages to the Australian community (see <https://www.sunsible.org.au>).
- *BeadRecede* – Accord's industry campaign effectively implementing Australia's phase-out of solid plastic microbeads (see Department website: <http://www.environment.gov.au/protection/waste-resource-recovery/plastics-and-packaging/plastic-microbeads>)
- *Hygiene for Health* website – a comprehensive brand-neutral education website on all matters relating to good hygiene practices at home, in food production and elsewhere, promoting how good hygiene enhances public health and is vitally important in responding to infection outbreaks such as Covid-19 (see <http://hygieneforhealth.org.au>)
- *Recognised*[®] environmentally preferable accreditation/labelling scheme for industrial and commercial cleaning and hygiene products (see <https://accord.asn.au/sustainability/recognised/>)
- *Wipesmart* website – a pro-active response from Accord to help educate the public that most types of wipes should be disposed of via the bin and not by toilet flushing (see <https://www.wipesmart.org.au>).
- *Accord Sustainability Charter*, which has just recently been updated and expanded – (see <https://accord.asn.au/sustainability/accord-sustainability-charter>).

2. Background on Accord's policy position regarding the proposed National Standard

The policy framework that is to be put in place via this bill has had a very long genesis, going back as far as 2005 under the then Howard Coalition Government. Back then the proposal for a national environmental risk management framework for industrial chemicals was called 'NChem'.

On 6 October 2006 Accord made its first submission to the then coordinating body for this policy initiative, the National Environment Protection Council Service Corporation (NEPC SC).

Of key significance to the direction of this policy was the Productivity Commission's *Research Study on Chemicals and Plastics Regulation* which reported in August 2008, and which rubber stamped the idea of a national framework for environment risk management of industrial chemicals. But did so on the basis of reform for greater efficiency in the overall chemicals regulation system, greater clarity in governance and accountability arrangements, and reduced duplication and overlap.

Since then four further Accord submissions have been made:

- i. One on 2 July 2013 to the NEPC SC, in response to Consultation Regulation Impact Statement prepared by PwC, which was released by NEPC in April 2013.
- ii. The next on 5 February 2016, this time to the federal Environment Department, in response to the Decision Regulation Impact Statement for a National Standard for Environmental Risk Management of Industrial Chemicals.
- iii. Another Accord submission followed on 15 May 2016, this time to the federal Environment Department, in response to the Discussion Paper on the National Standard.
- iv. And finally, our 3 March 2017 submission to the federal Environment Department, in response to the Draft National Standard release.

Accord's policy position has been one of *conditional* support for the concept of an effective and efficient national framework for the environmental risk management of industrial chemicals. Keeping in mind the need for more streamlined and risk proportionate regulation, rather than just more regulation and increased red tape, fees, levies and paperwork costs, all of which result in delays to market for new, improved products.

Core to Accord's position had been the Productivity Commission's recommendation to restrict the role of NICNAS to the assessment of hazard and risk of industrial chemicals. This more limited role for the assessment agency would then allow risk management to be undertaken by independent expert technical bodies within both the chemical scheduling system (administered by the Health Department) and the new national environmental risk management framework (to be administered by the Environment Department).

Such a model acknowledges the reality that environmental risks/impacts as they may occur within specific regions, catchments or ecosystems across the nation cannot be properly foreseen or managed by regulatory chemists sitting at a desk. State and federal environment agency experts are likely to be much better placed to understand environmental risks and appropriate management options and measures. Though this of course presumes adequate resourcing by the relevant federal/state/territory governments.

Whilst the Commonwealth Government has opted for a new Australian Industrial Chemicals Introduction Scheme (AICIS) to commence via the *Industrial Chemicals Act 2019* on 1 July 2020, and this new arrangement falls short of implementing the Productivity Commission's preferred model, Accord still calls for a clear demarcation between hazard/risk assessment processes and the risk management functions for environmental considerations. Without this demarcation, there is a risk not only of governance and accountability problems for the National Standard but ultimately of poor risk management decisions.

Aside from these very real concerns for the ultimate workability of the National Standard in terms of getting the structure and governance right, Accord has also strongly called for the new system to be appropriately risk proportionate and to deliver on the Government's red tape and cost reduction goals.

In announcing the industrial chemicals reforms back on 26 May 2015, the then Minister Senator the Hon Fiona Nash said: *"Businesses will save an extra \$23 million a year as the Coalition Government continues to cut red tape, simplifying assessments of industrial chemicals whilst maintaining safety standards."*

Reducing the burden on businesses by focusing chemicals assessment and risk management on the highest risk and most environmentally consequential chemicals/products is an outcome Accord both supports and expects Government policy to deliver on. That is why we have been expressing concerns throughout our past submissions mentioned above. In essence, it has been difficult to see how the National Standard would assist in delivery of the cost savings announced by the Government back in the 2015 Budget.

In dialogue with the federal Environment Department the following dot-point summary was developed to encapsulate Accord's position on the National Standard, and this was shared with the Department on 30 October 2017 for their briefing purposes:

'Accord generally agrees with the principles by which the National Standard has been developed and the policy intent. That is:

- *providing a nationally consistent and harmonized environmental risk management approach for industrial chemicals in Australia that is risk-based and proportionate*
- *creating a framework that is predictable to provide certainty to businesses in Australia*
- *achieving better protection of the environment through improved and more informed environmental management practices.*

Accord notes that there are some areas of concern, particularly related to the detail surrounding implementation of the framework. In particular, Accord will want clarity regarding:

- *alignment with the Government's agenda on better regulation and improving regulatory frameworks as a whole*
- *scheduling of existing chemicals under the National Standard*
- *scheduling of chemicals more broadly, particularly scheduling processes and worked examples*
- *costs of the framework and cost recovery arrangements*
- *alignment and interaction with the NICNAS reforms, including delegated legislation under the Industrial Chemicals Bill, and chemicals that will enter the National Standard processes (i.e. specific chemicals from the NICNAS Assessed, Reported and Exempted chemicals)*
- *scope of the National Standard and transition arrangements for existing chemicals including relevant timeframes for transition.'*

In terms of this 2017 position, it should be noted that the federal Parliament amended the *Industrial Chemicals Bill 2017* on 18 February 2019. Most significantly this removed any streamlining of notification and assessment of low-risk 'exempt' category ingredients. And this has implications for the operation of the National Standard, likely resulting in more paperwork and red tape around low-risk, low-consequence chemicals, and thereby contrary to the \$23 million savings reform goal previously announced by the Government.

For all businesses in the hygiene, personal care and specialty products industry, the next two to three years will be challenging, not just in terms of the anaemic Australian economy but also from an increased regulatory compliance workload and foreshadowed cost increases arising from industry's transition to the Australian Industrial Chemicals Introduction Scheme (AICIS), commencing 1 July 2020. This Scheme's new rules and processes will become a direct burden on all our member businesses, especially as new assessment criteria are applied to existing chemicals. This activity is more complicated for a formulated products sector like ours. Household and personal care products are complex mixtures of between 10 to 30 individual ingredients, often with many ingredients at very low concentrations below 5 percent, or even lower. Assessment activity for these types of products requires extensive disaggregation of all individual ingredients across the multitude of products and formulations a company may have. This is certainly a more complex and time-consuming task than would be the case for upstream chemical raw material companies that market single ingredients.

A poorly designed and implemented National Standard will only add to this regulatory compliance and red tape burden for businesses in our sector.

Accord also notes that at this stage of the development of the National Standard, there has been no tangible policy discussion with the regulated industry on how the Standard will be funded, whether costs will be imposed on businesses and/or the overall industry, and the likely level of funding needed for the operation of the Standard. Industry will be critically evaluating such arrangements, when finally revealed, against the red tape and compliance cost goals of the Government.

There is a legitimate industry concern that cost increases for chemicals assessment will work against much-needed investment, innovation and jobs creation within the various industry sectors impacted by industrial chemicals regulation and this National Standard.

It is therefore critical to get the legislative and administrative framework of the National Standard right, and to maintain consistency with the Government's better regulation and red tape reduction agenda. New measures like this National Standard should not compromise the goal of lighter touch regulation for low risk chemicals and faster times to market for low risk products.

3. Specific comments on *Industrial Chemicals Environmental Management (Register) Bill 2020* – exposure draft

Accord welcomes the opportunity to review and comment on the proposed bill and commends the Minister and the Department for providing all interested parties with this opportunity.

In considering the various provisions of this Bill, Accord has compared it to the relevant and complementary *Industrial Chemicals Act 2019* (IC Act 2019) and the chemical scheduling system's legislative underpinning via the *Therapeutic Goods Act 1989*.

3.a. Ministerial versus departmental expert decision-making

What is immediately notable is the prime role this bill establishes for the Minister in the National Standard process, making him/her the decisionmaker in all instances, despite the Standard being, for the most part, a highly technical decision-making process on a chemical-by-chemical basis. This contrasts to other assessment and risk management Schemes such as the Therapeutic Goods Administration and the Agricultural and Veterinary Medicines Authority, for which the

Minister instead appoints a suitably qualified departmental expert as both the Scheme's director and main decisionmaker. Likewise, the *IC Act 2019* gives most decision-making powers to the Executive Director of the AICIS, except of course for the appointment of said Executive Director and the publication of the Scheme's rules, which are ministerial powers.

Accord notes the approach in this bill is consistent with much of the other legislation within the environment portfolio in placing the minister front-and-centre of all decisions. Though we wonder if the somewhat special nature of this bill has been perhaps overlooked. For example, decisions to be made by the Minister under other portfolio legislation such as the *Environment Protection and Biodiversity Conservation Act 1999* and *Product Stewardship Act 2011* are most often technical policy decisions which though informed by science also have wide-ranging socioeconomic elements that make them highly suited to 'balanced' decision making by a Minister with a sense of 'what's in the best interests of the environment, community and the nation'. The two pieces of legislation just referred to also do not call on the minister to exercise his/her decision-making function on a regular basis. And certainly not with the regularity of a chemical scheduling process.

Let's consider the chemical scheduling system as it currently operates in Australia for public health. This Scheme to manage the public health risks of chemicals is backed in legislation by *s52D*, *s52E* and *s52EAA* of the *Therapeutic Goods Act 1989* (the *TG Act*). However, these provisions vest the power to publish/amend the Poison Standard (which is in essence the risk management register for public health purposes) with the Health Department Secretary (or his/her delegate). These decisions about where a specific chemical should be gazetted in terms of the various chemicals scheduling categories (such as S5 CAUTION or S6 POISON) are technical criteria-based decisions, as opposed to technical policy decisions. As such, within the health portfolio, it has been convention to assign these decision-making powers to the Department Secretary by law, rather than to the Health Minister. The two scheduling advisory committees established under the *TG Act* meet three times a year, and they consider multiple chemical scheduling decisions at each meeting.

Maybe there are sound reasons, of which Accord is currently unaware, as to why the Environment Minister needs to be prime decisionmaker within all the provisions of the *Industrial Chemicals Environmental Management (Register) Bill 2020*? It would be helpful to understand the rationale behind this.

3.b. Wide legislative scope/role for the Executive Director of AICIS, a health portfolio agency?

That said, we note the various provisions under *Part 5 – Miscellaneous* that allow the Minister to delegate certain of his/her decision-making powers. The arrangements outlined in *s67 Delegation by the Minister* appear appropriate in that this section's wording specifies that such a delegate must be either a senior department officer who "has appropriate skills, knowledge or expertise", or the Secretary of the (Environment) Department or an SES-level employee of the Department. This type of delegation makes sense and will assist the operation of National Standard.

However, noting our previous comments about the need for clear demarcation between risk assessment (as conducted currently by NICNAS and soon by the AICIS) and risk management (as put in place by this bill), we have concerns about how *s65* will operate. Here is the current wording of this section:

65 Executive Director may assist the Minister

The Executive Director may assist the Minister in the performance of the Minister's functions, or the exercise of the Minister's powers, under:

- (a) this Act; or
- (b) the decision-making principles; or
- (c) the rules.

Accord notes that *s7 Definitions* states that "Executive Director has the same meaning as in the *Industrial Chemicals Act*". Meaning this is the Executive Director of the Australian Industrial Chemicals Introduction Scheme, a statutory office holder in the health portfolio.

This provision, while clearly at the discretion of the Environment Minister, does appear to go beyond the manner in which the *IC Act* itself establishes the relationship between the Executive Director and the Health Minister.

We note that *s142(1)(d)* of the *IC Act 2019* allows for the Executive Director to have "any other functions" conferred "by any other Act".

However, *s142(1)* describes the function of the Executive Director in relation to the Health Minister as "to advise" the Minister. Clearly this does not go as far as to "assist" the Minister, as this bill does. In contrast this bill could allow the Executive Director to assist with the both Minister's functions and the exercising of the Minister's powers in relation to

not just the Act, but also the subordinate decision-making principles and the rules. For comparison, here are the relevant provisions from the *IC Act 2019*:

141 Executive Director

There is to be an Executive Director of the Australian Industrial Chemicals Introduction Scheme.

142 Functions of Executive Director

- (1) The Executive Director has the following functions:
 - (a) the functions conferred on the Executive Director by this Act;
 - (b) to promote the international harmonisation of regulatory controls or standards for industrial chemicals;
 - (c) any other function prescribed by the rules for the purposes of this paragraph;
 - (d) any other functions conferred on the Executive Director by any other Act;
 - (e) to advise the Minister about matters relating to any of the functions mentioned in paragraph (a), (b), (c) or (d).
- (2) The Secretary of the Department may require the Executive Director to perform functions or carry out duties for the Department in relation to chemicals to the extent to which they do not interfere with the performance of functions referred to in subsection (1).

It is unclear why the AICIS Executive Director, who will always be a health portfolio specialist, should be granted such a wide scope of discretionary 'powers' to assist the Environment Minister, when relevant technical experts in the Environment Department should be better placed to provide such assistance.

And this relates back to our earlier comments regarding Accord's long running concerns that a clear demarcation between the hazard/risk assessment and risk management functions must be maintained for clear governance and accountability within both the National Standard and the AICIS.

3.c. 'May' versus 'shall' provisions in relation to the establishment of a Register

It is acknowledged that for most provisions in this bill it is appropriate to state that the Minister "may" have regard to various matters or "may" make various decisions or undertake various actions.

However, it is somewhat perplexing that a bill whose primary stated purpose under s3(b) is to "provide for the Government... to establish a register of scheduling decisions..." leaves the creation of this register to the Minister's discretion under s20(1) as follows: "The Minister *may*, by legislative instrument, establish a register or scheduling decisions..."

Accord feels the register should be explicitly made by the legislation, not be a discretionary decision vested with the Minister, and therefore suggests the bill be redrafted to achieve this.

3.d. Primacy of matters the Minister must have regard to for scheduling decisions

Section 13 of the bill spells out these matters in the following order: 1) the AICIS risk assessment (latest version if more than one), 2) "any relevant risks that the chemical poses, or may pose, to the environment and how any such risks may be minimised", 3) advice to the Minister from the Advisory Committee, 4) relevant obligations under international agreements (to which Australia would be a signatory), 5) relevant submissions in response to the publication on the Department's website of the proposed decision, 6) information the Minister has requested under s17(1) and s18(1).

While it is likely that the bill did not intend to list these in any specific hierarchy, it would seem reasonable to Accord to assume that the bill's establishment of specific expert Advisory Committee to support decision making would indicate that this committee's advice, which would most likely be a synthesis and analysis of the other information, should take precedence.

No matter how potentially expert any current or future Minister may be, it is considered very unlikely, in the scheme of the Minister's heavy workload, that the Minister would go through each of these matters as primary information sources.

If it is not the intention of the bill to make the Advisory Committee the collator and evaluator of these data and information, then Accord would ask for clarity on who would actually undertake this critical role.

In relation to s14 and the matters which the Minister *may* have regard to for a scheduling system, we are wondering why AICIS risk assessment is referenced again, given it appears in the *must have regard to* provision (i.e. s13).

3.e. Clarification on status of the Rules

s68 gives the Minister power to make Rules to support the Act. However, it is noted that these are stated in s68 as being neither disallowable nor subject to sunset. It has been explained to Accord by Department officials that this is a result of the Act and the Rules being an outcome of an Intergovernmental agreement or arrangement.

This is a situation that requires more detailed explanation. There is always a concern that the 'devil is in the details' and even when primary legislation, such as this bill, is mostly sound and workable, subsequent Rules may contain hidden flaws and unintended consequences. This is why the Parliament maintains active scrutiny of disallowable instruments. To assuage apprehensions that either the industry or the Parliament may have regarding the Rules, it would be helpful if more explanation could be provided on undertakings that could be given as to how these Rules will be drafted, reviewed and updated over time. The lack of sunset is a concern, as this is helpful in ensuring regulatory rules stay contemporary and do not drift indefinitely without review.

4. Comments on *Industrial Chemicals Environmental Management (Register) Principles 2020*

Accord notes that the Principles instrument appears consistent with previously published details for the National Standard. It is also noted that the Department has outlined the criteria for categorising organic chemicals as either Persistent, Bioaccumulative and/or Toxic.

However, a key trigger in the Principles that would take a chemical from Schedule 3 to the higher Schedule 4 is whether the chemical is categorised as an "endocrine disrupter" (paragraph 10(4)(c) of the draft instrument).

In Accord's 15 May 2016 submission we cautioned about the need to adopt a science-based, hard data and appropriately internationally aligned approach for categorisation of a chemical as an "endocrine disrupter". And that this may need to await the establishment of a global scientific consensus on the appropriate measurement and toxicological aspects for this environmental endpoint.

More explanation is needed on how the National Standard would seek to address this matter.

Additionally, given that this instrument is also understood to be neither disallowable nor subject to sunset, advice on how it will be administered would be helpful.

5. Comments on risk management measures example instrument

Accord notes the *Industrial Chemicals Environmental Management (Register) Instrument 2020* released as an example by the Department. While this is helpful in illustrating the way in which it is intended National Standard scheduling decisions are to be gazetted, our understanding is that the Schedule 2 example used would most likely not be in scope for the National Standard. This example relates to commercial disinfectant products. These types of products are most often regulated by the Therapeutic Goods Administration under medical devices requirements. By definition such products are not "industrial chemicals" and are therefore outside of the remit of the National Standard. Care needs to be taken to ensure that duplication and conflict with existing product regulation by the TGA and the APVMA does not occur as the National Standard is implemented.

6. Conclusion

It is critical to get the legislative and administrative framework of the National Standard right, and to maintain consistency with the Government's better regulation and red tape reduction agenda. New measures like this National Standard should not compromise the goal of lighter touch regulation for low risk chemicals and faster times to market for low risk products.

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