

Chapter 2

Issues

2.1 During his second reading speech on the Industrial Chemicals Bill 2017 (main Bill), the Assistant Minister commented that not all stakeholders favoured the same approach to industrial chemical regulation:

I think it is fair to say that our stakeholders do not all 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. But, after carefully considering the views of all, I believe that the bill before us strikes a very effective balance.¹

2.2 Stakeholders had opportunities to shape the Bills during the four rounds of public consultation, which included the release of five public consultation papers and eight public workshops.² The Department of Health (Department) conducted public consultation on the fifth paper relating to the delegated legislation while the Bills were being considered by the committee.³

2.3 All of the concerns below relate to the main Bill. No substantive issues were raised by submitters in relation to the other bills.

Exempted introductions

2.4 The main Bill establishes six different categories in which chemicals may be introduced (either imported or manufactured in Australia).⁴ One of these categories is called 'exempted introductions'.⁵

2.5 Some submitters, such as the Public Health Association of Australia (PHAA), raised concerns about the number of chemicals that may become 'exempted introductions' under the rules.⁶

2.6 The Explanatory Memorandum explains that 'exempted introductions' will be for 'very low risk introductions, based on hazard and exposure'. Because the risk is very low, only record keeping and an annual statement of compliance are required.⁷

2.7 Two primary concerns were raised about the proposed exempted introductions category: first, the category permits chemicals to be introduced without notifying the

1 *House of Representatives Hansard*, 1 June 2017, p. 12.

2 Department of Health, *Submission 14*, p. 4.

3 Mrs Gillian Shaw, Assistant Secretary, Department of Health, *Committee Hansard*, 26 July 2017, p. 29.

4 See Industrial Chemicals Bill 2017, Pt 3.

5 See Industrial Chemicals Bill 2017, cl. 26.

6 Public Health Association of Australia, *Submission 4*, p. 6.

7 Explanatory Memorandum, Industrial Chemicals Bill 2017, pp. 24–25.

regulator; and second, the main Bill does not require the regulator to track low risk chemicals.

Introduction without notice

2.8 The PHAA and Cancer Council Australia expressed concerns that a large number (or a large volume) of chemicals could be introduced without the regulator or the public knowing about them.⁸

2.9 Victorian Trades Hall Council told the committee that:

If this [Bill] goes ahead, for the first time since 1990...we will have new chemicals coming into Australia that government will not know about, that the public will not know about and that workers will not know about.⁹

2.10 The Department clarified that, under the existing regime, 97 per cent of chemicals are already being introduced under an exempted category where the introducer determines that there is 'no unreasonable risk'.¹⁰

2.11 Under the new scheme, the regulator will set categories that align with risk, based on objective criteria.¹¹ The Department envisages that the exempted category will include chemicals that are of 'very low risk', such as polymers of low concern and chemicals where the introducer has the relevant toxicological testing to demonstrate that the chemical is not hazardous.¹²

2.12 The Department explained that the reason for adopting this approach was:

...to introduce a category that would encourage industry to move to cleaner, greener chemistry...if they have the data to show that their chemical is cleaner and greener, we are allowing that to occur more readily in the new system to allow industry to innovate in those safer areas.¹³

2.13 According to analysis undertaken by the Department, more chemicals are likely to be introduced in the reported category, where introducers are required to inform the regulator, than in the exempt category.¹⁴

2.14 Even if this were not the case, industry representatives from Accord and Chemistry Australia observed that chemical regulation was only one part of a broader scheme that protects both workers and the public. They pointed to consumer law,

8 Dr Joe Hlubucek, Member, PHAA, *Committee Hansard*, 26 July 2017, p. 3; Associate Professor Deborah Glass, Expert Member, Occupational and Environmental Cancers Committee, Cancer Council Australia, *Committee Hansard*, 26 July 2017, p. 13.

9 Ms Renata Musolino, OHS Website and Information Organiser, Victorian Trades Hall Council, *Committee Hansard*, 26 July 2017, p. 9.

10 Dr Sarah Rumble, Principal Advisor, NICNAS Reforms, National Industrial Chemicals Notification and Assessment Scheme, *Committee Hansard*, 26 July 2017, p. 27.

11 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 27.

12 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 27.

13 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 27.

14 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 27.

occupational health and safety laws and the chemical scheduling system as examples of other regulations that industry also need to comply with in this area.¹⁵

Tracking non-hazardous chemicals

2.15 Haztech Environmental and the National Toxics Network raised concerns that, even though the risk may be low, the main Bill does not require the regulator to track low risk chemicals.¹⁶

2.16 These submitters were concerned that a low risk chemical may, with additional exposure, be considered hazardous and the regulator will not know how much of that chemical has been introduced or where it is.¹⁷ The National Toxics Network said in its submission:

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.¹⁸

2.17 If such a situation arose, the Department explained that it considers that the system of evaluations in the main Bill is more flexible than the existing regime and would allow it to respond more effectively.¹⁹ It explained that:

If a concern arises about a particular class of chemicals or a particular chemical, we have information gathering powers under the new scheme where we can find out who's introducing it. We can initiate an evaluation on those chemicals which can lead to regulatory outcomes such as changing our criteria so those chemicals are no longer considered to be very low risk, making recommendations to risk managers or, in extreme cases, being the regulator of last resort and removing those chemicals from commerce.²⁰

2.18 The Department also advised that the main Bill requires introducers to keep records for five years and failure to provide the Executive Director with the necessary information may result in a penalty of between 60 and 300 penalty units.²¹ The requirements and penalties will both be strengthened by the main Bill.²²

15 Mr Craig Brock, Policy and Public Affairs Director, Accord Australia, *Committee Hansard*, 26 July 2017, p. 20; Mr Bernard Lee, Director Policy and Regulation, Chemistry Australia, *Committee Hansard*, 26 July 2017, p. 21.

16 Haztech Environmental, *Submission 1*, p. 1; National Toxics Network, *Submission 13*, [p. 3].

17 Haztech Environmental, *Submission 1*, p. 1; National Toxics Network, *Submission 13*, [p. 3].

18 National Toxics Network, *Submission 13*, [p. 3].

19 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 31.

20 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 32.

21 Dr Rumble, answers to questions on notice, 26 July 2017 (received 2 August 2017).

22 Dr Rumble, answers to questions on notice, 26 July 2017 (received 2 August 2017).

Continuation of IMAP

2.19 Both in submissions and in oral evidence to the committee, stakeholders expressed concern that the Inventory Multi-tiered Assessment and Prioritisation program (IMAP) may not be continued.²³ The PHAA explained that IMAP was a program designed to prioritise and assess the over 30 000 untested chemicals that are on the existing industrial chemical inventory but have never been tested.²⁴

2.20 The PHAA raised concerns that there was nothing in the main Bill that committed the Executive Director to continue the process and that there was no dedicated budget to ensure that the work continued.²⁵

2.21 Cancer Council Australia elaborated on this concern saying:

Everybody who has spoken so far has had enormous concern to ensure the IMAP process continues. My understanding...is it is [the regulator's] intention to do so, but that is the intention of the current executive director as supported by the current minister. Those people will change. So the question is: what guarantees do we have around that process of assessing those tens of thousands of chemicals?²⁶

2.22 The Department's response to that question was that the decision not to legislate a specific replacement was deliberate in order to ensure flexibility.²⁷ The Department explained:

The IMAP process was an administrative process that didn't have a legislative basis, and so what we've tried to do in the scheme being put before parliament now is to enable an evaluation framework, which will allow us to have a flexible process that can respond to emerging concerns and which can end up in regulatory outcomes.²⁸

2.23 The Department provided assurances that the IMAP process, or something similar, will continue into the future.²⁹ The Department considered that the new system would strengthen rather than diminish IMAP.³⁰

23 PHAA, *Submission 4*, p. 8; Cancer Council Australia, *Submission 6*, [p. 2]; AMWU, *Submission 8*, pp. 3, 5; AMWU, *Submission 8.1*, [p. 2]; Dr Hlubucek, *Committee Hansard*, 26 July 2017, p. 6; Ms Jo Immig, National Coordinator, National Toxics Network, *Committee Hansard*, 26 July 2017, p. 6; Ms Musolino, *Committee Hansard*, 26 July 2017, p. 10.

24 Dr Hlubucek, *Committee Hansard*, 26 July 2017, p. 6.

25 Dr Hlubucek, *Committee Hansard*, 26 July 2017, p. 6.

26 Mr Terry Slevin, Chair, Occupational and Environmental Cancers Committee, Cancer Council Australia, *Committee Hansard*, 26 July 2017, p. 11.

27 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 34.

28 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 34.

29 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 34.

30 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 35.

Details contained in the rules

2.24 The main Bill provides that certain details about the operation of the scheme will be set out in rules made by the Minister.³¹

2.25 The committee received evidence that some submitters had concerns about the detail that had been left to the rules and that it was unclear what the rules might contain.³²

2.26 The Department clarified that the fifth consultation paper released by the National Industrial Chemicals Notification and Assessment Scheme outlined the whole scheme in considerable detail.³³ The Department described the fifth consultation paper as a plain English version of the rules and noted that additional consultation would be conducted once the draft rules had been formulated.³⁴

2.27 The Department explained that significant parts of the scheme would be provided for in rules to ensure that they could be flexibly updated to reflect evolving science.³⁵

Animal test data ban

2.28 The animal test data ban implements a government election commitment to ban animal testing for new chemical ingredients from 1 July 2018 and encourages the use of alternative test methods.³⁶

2.29 The proposed test data ban provides that if an application is made to introduce an industrial chemical that will solely be used in cosmetics, the application cannot include animal test data obtained from tests conducted on or after 1 July 2018 in circumstances prescribed by the rules.³⁷

2.30 The Royal Society for the Prevention of Cruelty to Animals (RSPCA) and Be Cruelty-Free Australia raised concerns that the provisions, as drafted, will not have the desired effect because the test data ban applies only to chemicals introduced solely for use in cosmetics, whereas most cosmetic ingredients are multi-use chemicals.³⁸ Both

31 See Industrial Chemicals Bill 2017, cl. 180 (Rules), 26 (Exempted introductions).

32 Cancer Council, *Submission 6*, [p. 2]; Australian Manufacturing Workers' Union (AMWU), *Submission 8*, p. 4; National Toxics Network, *Submission 13*, p. 5; Ms Musolino, *Committee Hansard*, 26 July 2017, p. 9; Mr Slevin, *Committee Hansard*, 26 July 2017, p. 10.

33 Mrs Shaw, *Committee Hansard*, 26 July 2017, p. 26.

34 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 28.

35 Mrs Shaw, *Committee Hansard*, 26 July 2017, p. 26.

36 Explanatory Memorandum, Industrial Chemicals Bill 2017, p. 4.

37 See cl. 168. Clause 103 provides for the rule-making power.

38 Be Cruelty-Free Australia, *Submission 15*, [pp. 2–3]; RSPCA, *Submission 16*, [p. 1].

proposed amendments to the main Bill that, they said, would bring Australia into closer alignment with the European Union.³⁹

2.31 Accord's submission notes that the main Bill has been carefully worded to comply with Australia's international trade obligations.⁴⁰

2.32 The Department clarified that the ban was designed to apply only to unlisted chemicals that had not previously been used for anything else.⁴¹ The Department considered that when only these chemicals were considered, the ban would be effective.⁴²

2.33 In relation to the RSPCA and Be-Cruelty Free Australia's amendments, the Department explained that:

...the reason you do not see the word 'solely' in the EU system is because the ban is only present in cosmetic regulation, which only deals with cosmetic products. There's no need to say 'solely' when it's not multiuse products being regulated.⁴³

2.34 Ultimately, the Department rejected any suggestion that there was a loophole in the main Bill, saying:

The act itself is very clear that we would not accept data derived from animal tests from 1 July 2018 for cosmetic use only. I know there's a perception that there's a loophole, but, from a legislative point of view about how we will operate the regulatory scheme, there's no loophole.⁴⁴

2.35 The Department made it clear to the committee that it had conducted extensive consultation on the ban and it is confident that the ban aligns with the restrictions in place in the European Union.⁴⁵

Monitoring and enforcement

2.36 Cancer Council Australia and the Australian Manufacturing Workers' Union (AMWU) raised concerns that there was little in the Explanatory Memorandum to the main Bill that explained how the monitoring and enforcement regime would be undertaken.⁴⁶

39 Be Cruelty-Free Australia, *Submission 15*, [pp. 2–3]; RSPCA, *Submission 16*, [p. 1]; Ms Hannah Stuart, Campaign Coordinator, Be Cruelty-Free Australia, Humane Society International, *Committee Hansard*, 26 July 2017, p. 19; Dr Jed Goodfellow, Senior Policy Officer, RSPCA, *Committee Hansard*, 26 July 2017, p. 19.

40 Accord, *Submission 7*, p. 4.

41 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 33.

42 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 33.

43 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 34.

44 Mrs Shaw, *Committee Hansard*, 26 July 2017, p. 34.

45 Department of Health, *Submission 14*, pp. 5, 8–9; Mrs Shaw, *Committee Hansard*, 26 July 2017, p. 34.

46 Cancer Council Australia, *Submission 6*, [p. 2]; AMWU, *Submission 8*, p. 4.

2.37 The Department explained that the main Bill provides the regulator with a more flexible range of penalties to ensure compliance, saying:

If there's non-compliance under our current act at the moment, our only real tool is taking them to full prosecution, and that's not always appropriate for the sorts of non-compliance. But under the new act, with these different penalty provisions, we will be able to, for example, issue infringement notices to deter people from non-compliance and bring them back into compliance.⁴⁷

2.38 The Department also highlighted that the penalties in the main Bill are stronger than in the existing Act.⁴⁸

Committee view

2.39 The committee commends the Department of Health and the National Industrial Chemicals Notification and Assessment Scheme on the extensive consultation that has been undertaken in relation to these Bills. Whilst the committee acknowledges that some submitters raised concerns about certain aspects of the Bills, the committee notes that many aspects of the Bills received widespread approval from stakeholders.

2.40 The committee considers that the Bills rebalance Australia's industrial chemicals regulation to provide a more flexible approach that maintains public safety and reduces the regulatory burden on Australian businesses.

Recommendation 1

2.41 The committee recommends that the bills be passed.

Senator Jonathon Duniam

Chair

47 Dr Rumble, *Committee Hansard*, 26 July 2017, p. 35.

48 Mrs Shaw, *Committee Hansard*, 26 July 2017, p. 35.

