

Dissenting Report by the Australian Greens

Introduction

1.1 The Australian Greens are concerned that majority Committee report ignores much of the evidence from key stakeholders on the potentially hazardous implication of this legislation, should it pass unamended.

1.2 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, this marks a significant reduction in regulatory oversight for industrial chemical. The Australian Greens are not convinced this legislation provides appropriate protection to the community from the potential risks.

1.3 While this bill commences the process to a significantly altered regulatory process for industrial chemicals, much of the detail of the new system is left to as-yet undrafted regulation. This has led to significant concern from stakeholders about a lack of detail about the proposed changes.

1.4 The majority report congratulates the Department of Health and the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) for the consultation process for these bills. While it is clear that numerous consultation papers have been released, it does appear that consistent concerns have been raised throughout that process by stakeholders, without adequate response from the government to these concerns.

Expanded category of exempted chemicals

1.5 A primary concern of the Australian Greens, raised repeatedly by stakeholders, is that this bill sets up a significantly expanded category of exempted chemicals. As the Public Health Association of Australia (PHAA) explained:

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 with an annual report which includes the name of the chemical and the volume.

However, the proposed regulation for the new expanded category of exempted chemicals would enable the introducer to self-assess the chemical for its risk to human health and the environment against our guidelines 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.¹

1.6 The result of this change would be that we would have chemicals introduced into the Australian market with no notification to the Australian government or the community, with industry alone self-assessing that they are very low-risk.

1 Dr Joe Hlubucek, Member, Public Health Association of Australia, *Committee Hansard*, 26 July 2017, pp. 2–3.

1.7 In his second reading speech, the Assistant Minister himself stated that this bill would reduce '...the number of chemicals assessed by the regulator by more than 70 per cent'², drastically reducing the oversight of the chemicals Australians are exposed to.

1.8 As highlighted by stakeholders, this expansion of the exempted chemicals classification creates an unacceptable situation in which the regulator has no knowledge of chemicals in the Australian market.

1.9 As the PHAA outlined:

...an expanded category of exempted chemicals, which would be a much larger number of chemicals, would be only required by the industry or the importer who self-assessed the chemicals for its risks. This means they would be looking at published data, records that they can find, about the possible risks that this chemical may pose to human health or the environment. And they just need to keep this record themselves: they do not need to actually notify NICNAS, or the new regulator, that such a chemical has been introduced into Australia. They are only required to keep a record in case there is a postmarket survey, which would be only a random survey of introducers of chemicals to see that people are observing compliance.³

1.10 Ms Immig from the National Toxics Network (NTN) outlined that the legislation constitutes a drastic change in the regulation of industrial chemicals:

...the bills represent a wholesale move, for between 70 to 90 per cent of chemicals, which will be reclassified as low-risk chemistries, away from an independent regulator assessment and recordkeeping process to a self-regulated industry that is doing the assessments and keeping the records themselves. And the only way we'll ever know whether they have done the assessment correctly and categorised themselves correctly and know what the chemicals might even be is completely dependent on a very small post-market compliance program, which we don't even understand the size of yet.⁴

1.11 The implications of this change are of significant concern to the Australian Greens. Stakeholders highlighted that leaving the government and the Australian community in the dark, with no public record of what chemicals they may be exposed to, can lead to serious issues.

1.12 As NTN pointed out, many chemicals which may be thought to be low-risk can be found to lead to greater risk over time:

...after 25 years working in this space what the history of chemical regulation has shown us is that what we think is low risk today may turn out to be a highly hazardous chemical in 10 or 15 years. I go back to the example I gave in my opening statement about the perflourinated chemicals

2 *House of Representatives Hansard*, 1 June 2017, pp. 11–13.

3 Dr Hlubucek, *Committee Hansard*, 26 July 2017, p. 3.

4 Ms Joanna Immig, National Toxics Network, *Committee Hansard*, 26 July 2017, p. 3.

and how our regulators have missed those. They are now considered a highly risky and toxic chemical that needs to be dealt with. What we consider low risk today, may well be our next batch of very dangerous chemicals.⁵

1.13 Professor Moore, CEO of the PHAA told the Committee, there can be serious delays and cost in identifying a hazard if the information is not available publicly:

If there is a concern, when an epidemiologist tries to trace what is happening, they won't even know what chemicals are in the country. There will be ways, of course—epidemiologists are very clever people—to can find this out but the ways will be tedious, take a huge amount of time and significant cost. For a very minimal intervention, we can then see that we have an ability for anybody to look at the statistics to identify what groups of chemicals may be causing problems and then narrow down the impact on human health or the environment.⁶

1.14 The Australian Greens has listened to stakeholders and are concerned that the non-reporting of chemicals that have only been self-assessed by industry as very low risk, creates unnecessary risk to the community. It is the view of the Australian Greens that each chemical introduced to the market should be, at the very least, reported to government and made public to the Australian community.

Post-market monitoring

1.15 Particular concerns were raised by representatives from the union movement, as to the reliance on random post-market monitoring of those chemicals that are exempt from reporting.

1.16 As Ms Musolino from the Victorian Trades Hall Council told the Committee:

...in reality NICNAS will have very little ability to do post-market monitoring, and we have concerns about how the risk managers deal with chemicals in workplaces.⁷

1.17 She continued:

The final thing that I want to talk about is the powers of NICNAS. We know that they will be doing some postmarket monitoring. They themselves have said that it might be about 10 per cent. That is not enough, given that there is so much reliance on self-assessment.⁸

Recommendation 1

The Australian Greens recommend that the bill be amended to ensure that no chemicals introduced into the Australian market, including those classified under the proposed system as 'very low risk', are exempt from notification.

5 Ms Immig, *Committee Hansard*, 26 July 2017, p. 5.

6 Prof Moore, *Committee Hansard*, 26 July 2017, p. 5.

7 Ms Musolino, *Committee Hansard*, 26 July 2017, p. 9.

8 Ms Musolino, *Committee Hansard*, 26 July 2017, p. 10.

IMAP

1.18 Numerous stakeholders raised concerns about the lack of commitment in this legislation to the Inventory Multi-tiered Assessment and Prioritisation (IMAP) framework for assessing the huge backlog of unassessed chemicals currently in use in Australia.

1.19 Dr Hlubucek explained:

The IMAP procedure was introduced largely through comments by community groups that were rather concerned about the large number of unassessed chemicals over the 30,000 on the chemicals inventory. There was an undertaking, with new funding provided, to look at a priority listing of chemicals on that inventory of 35,000 chemicals and to start assessing them. NICNAS has done a very good job of starting that and has made assessments on a little over 3,000 of those chemicals, but that has taken a year and a half. You can see that to prioritise and assess the other 25,000 or 30,000 chemicals is a multiyear exercise. In the consultation papers, there is reference to consideration of looking at prioritising chemicals in the list for examination, but there is no strong commitment for funding to make that happen.⁹

1.20 As the Victorian Trades Hall Council outlined to the Committee, the bill neither continues with the previous process, nor entrenches the IMAP:

What we have now in the bill is neither PEC—while it was unwieldy, at least it was a process where people could nominate chemicals—nor the IMAP, which has proven to be so successful. We have neither of those.

What we have is: it is left to the executive director to decide whether a chemical will be assessed—it is at his discretion. That is actually shocking. It is not enough. It will mean that probably the vast majority of the over 30,000 chemicals still on the AICS that have had no assessment will not be assessed. It is not acceptable. Mind you, there was very little discussion of this in the consultation papers. We have a proposal on this as well.¹⁰

1.21 As Ms Musolino continued:

In our view, what's lacking in the bill is a process by which the executive director can ensure that the assessment of existing chemicals occurs. That is a big gap. ...it says that the executive director may initiate an assessment, and it's in two circumstances: one where there is a certificate holder—that is, someone who's introduced the chemical and it has been assessed or it has been, under the new system, reported or assessed—or something that's on the system already. So it's a 'may'. That very vagueness replaces what's currently there as the PEC process, which was not very good, and the new IMAP process, which is excellent. In our view, it's that lack of detail as to

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

10 Ms Musolino, *Committee Hansard*, 26 July 2017, p. 10.

how the pre-existing chemicals are going to be systematically addressed and assessed.¹¹

1.22 The Australian Greens share this concern relating to the execute director's powers established in this bill to initiate assessment of existing chemicals. There was broad support demonstrated by stakeholders for the IMAP system, and it is clear that that is the process which should continue to address the huge backlog of unassessed chemicals.

1.23 The AMWU submission outlines one possible approach to ensure that the IMAP framework be progressed.

Recommendation 2

The Australian Greens recommend the Bill be amended to enshrine the continuation of the Inventory Multi-tiered Assessment and Prioritisation (IMAP) framework for assessing existing chemicals.

Animal testing ban

1.24 The Industrial Chemicals Bill 2017 goes some way to achieving the government's election promise to ban new animal-tested cosmetic ingredients.

1.25 Many people and organisations have contributed to this important step to ending cruel cosmetics.

1.26 We acknowledge the significant work of Be Cruelty-Free Australia, RSPCA Australia, Choose Cruelty Free, Animals Australia, World Animal Protection and the International Fund for Animal Welfare.

1.27 The Greens End Cruel Cosmetics Bill 2014 provided a legislative framework of how to achieve the ban on cosmetics and cosmetic ingredients being tested on animals in Australia.

1.28 Considerable cross party work laid the basis for Industrial Chemicals Bill 2017. At the end of 2014 a number of Senators representing most parties in the Senate moved a motion calling for the end of testing cosmetics on animals. This was a significant breakthrough. In particular we acknowledge the work of Senator Anne Ruston who played a key role in winning government support for the ban.

1.29 The ban is intended to bring Australia into line with major markets such as the European Union.

1.30 The vast majority of Australians do not want to apply lipstick or use soap that caused thousands of animals to suffer. These animals may have been blinded, poisoned or burnt for a new cosmetic marketing gimmick.

Loopholes in Industrial Chemicals Bill 2017

1.31 Sections 103 and 168 ban the use of data derived from animal tests conducted from 1 July 2018 that would support the introduction of new industrial chemicals for an end use solely in cosmetics.

11 Ms Musolino, *Committee Hansard*, 26 July 2017, p. 10.

1.32 However, this bill determines that application of the ban on animal-tested data applies only to chemicals that will be used solely as cosmetics ingredients. The ban does not apply to any chemicals that may be used also in a non-cosmetic product, such as air freshener. This means that businesses could continue to use data from cruel animal testing regimes to support the introduction into Australia of multi-use chemicals.

1.33 Be Cruelty-Free¹² and RSPCA¹³ in their submissions set out how this represents a major loophole in the Bill that can allow a sizable number of animal-tested chemicals to be used in cosmetics and weakens the claim that this legislation will bring in a comprehensive ban on the use of animal-tested cosmetics ingredients.

Consumer expectations

1.34 Some 81 per cent of Australians support a national ban on the sale of animal-tested cosmetics.¹⁴ The Greens believe legislators have an obligation to reflect public expectation that this bill accurately and diligently achieves what it claims to achieve. Consumers must be assured that their cosmetics do not support animal testing.

1.35 The Australian cosmetics industry body Accord suggests in its Position Paper attached to its submission that the Department of Health's survey of consumer attitudes found cruel cosmetics is 'not a high profile issue for consumers'.¹⁵ They attempt to back up their case by using Department of Health survey data of consumer attitudes which found 'around 35% of consumers did not know whether the ingredients or products currently available in Australia were tested on animals'. This is disingenuous because what the Department of Health survey shows is that 35 per cent did not know whether ingredients were tested on animals. This does not mean it is not an issue of concern for consumers.

Be Cruelty-Free amendments

1.36 The Greens support the amendments suggested by Be Cruelty-Free Australia which remove the word 'solely' from the sections 103 and 168.¹⁶ This will guarantee that all cosmetics ingredients introduced in Australia, regardless of whether they have an alternative non-cosmetic end-use, will not be based on animal pain and suffering.

1.37 Be Cruelty-Free Australia's amendments also require chemicals to undergo the two separate application processes if a chemical to be used has both a cosmetic and a non-cosmetic application.

1.38 This is the only way an application to introduce a chemical with a cosmetic end-use will always be based on non-animal test data. This change would close a

12 Be Cruelty-Free Australia, *Submission 15*.

13 RSPCA, *Submission 16*.

14 Nexus Research, *HRA Opinion Poll 2013* http://www.humanerresearch.org.au/literature/136286/Australians_say_no_to_animal_experiments (accessed 16 March 2014).

15 Accord, *Submission 7*, [p. 14].

16 Be Cruelty-Free Australia, *Submission 15*, p. 4.

loophole that allows proponents to simply advise of a multi-end use to avoid the ban, which would leave them free to introduce animal-tested cosmetics ingredients.

1.39 It is the only way to confirm to consumers that the cosmetics they are using are not cruel cosmetics.

International trade law

1.40 Wording proposed in this Bill is not discriminatory under international trade law as insinuated by Accord, as it effectively applies the same prohibitions to domestic chemicals as it does to imports. Further, Article XX(a) of the GATT authorizes member states to deviate from their other WTO commitments where 'necessary to protect public morals' and in Article XX(b) where 'necessary to protect human, animal, or plant life or health...'.¹⁷

Recommendation 3

The Greens recommend that the Bill be amended to ensure that applications to introduce chemicals for cosmetic end-use do not use animal tested data under any circumstances.

Senator Richard Di Natale

17 World Trade Organisation, *The General Agreement on Tariffs and Trade (GATT 1947)*, Art. XX, http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm (accessed 8 August 2017).

