

The Senate

Community Affairs
Legislation Committee

Industrial Chemicals Bill 2017 [Provisions]
and related bills

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45th Parliament

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Participating members for this inquiry

Senator Richard Di Natale	Victoria, AG
Senator Lee Rhiannon	New South Wales, AG

TABLE OF CONTENTS

Membership of the Committee	iii
--	------------

Abbreviations	vii
----------------------------	------------

List of Recommendations	ix
--------------------------------------	-----------

Chapter 1

Inquiry into the provisions of the Industrial Chemicals Bill 2017 and related bills	1
--	----------

Purpose of the Bills	1
----------------------------	---

Background.....	1
-----------------	---

Key provisions of the Industrial Chemicals Bill 2017	1
--	---

Key provisions of the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017	2
--	---

Key provisions of the Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017.....	3
--	---

Purpose and key provisions of the Industrial Chemicals (Customs) Bill 2017; Industrial Chemicals Charges (Excise) Bill 2017; Industrial Chemicals Charges (General) Bill 2017.....	3
--	---

Legislative Scrutiny	4
----------------------------	---

Conduct of the inquiry	5
------------------------------	---

Notes on references	5
---------------------------	---

Chapter 2

Issues	7
---------------------	----------

Exempted introductions.....	7
-----------------------------	---

Continuation of IMAP	10
----------------------------	----

Details contained in the rules	11
--------------------------------------	----

Animal test data ban	11
----------------------------	----

Monitoring and enforcement	12
----------------------------------	----

Committee view.....	13
---------------------	----

Labor Senators' Additional Comments

Legislative approach.....	15
Exempted Introductions.....	15
Continuation of IMAP	16
Animal test data ban	16
Reliance on Risk Managers	16

Dissenting Report by the Australian Greens

Introduction	19
Expanded category of exempted chemicals	19
Post-market monitoring	21
IMAP	22
Animal testing ban.....	23

Appendix 1

Submissions and additional information received by the Committee.....	27
--	-----------

Appendix 2

Public hearings.....	29
-----------------------------	-----------

ABBREVIATIONS

AICIS	Australian Industrial Chemicals Introduction Scheme
AMWU	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (known as the Australian Manufacturing Workers' Union)
Assistant Minister	The Hon. Dr David Gillespie MP, Assistant Minister for Health
Bills	Industrial Chemicals Bill 2017; Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017; Industrial Chemicals (Notification and Assessment) Amendment Bill 2017; Industrial Chemicals Charges (General) Bill 2017; Industrial Chemicals Charges (Customs) Bill 2017; Industrial Chemicals Charges (Excise) Bill 2017
Charges Bills	Industrial Chemicals Charges (Customs) Bill 2017; Industrial Chemicals Charges (Excise) Bill 2017; Industrial Chemicals Charges (General) Bill 2017
Department	Department of Health
IC(NA) Act	<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>
IMAP	Inventory Multi-tiered Assessment and Prioritisation program
Main Bill	Industrial Chemicals Bill 2017
PHAA	Public Health Association of Australia
RSPCA	Royal Society for the Prevention of Cruelty to Animals
Scrutiny of Bills Committee	Senate Standing Committee on the Scrutiny of Bills

LIST OF RECOMMENDATIONS

Recommendation 1

2.41 The committee recommends that the bills be passed.

Chapter 1

Inquiry into the provisions of the Industrial Chemicals Bill 2017 and related bills

Purpose of the Bills

1.1 On 1 June 2017, the Hon. Dr David Gillespie MP, Assistant Minister for Health (Assistant Minister), presented the following suite of bills to the House of Representatives (collectively, Bills):

- (a) Industrial Chemicals Bill 2017;
- (b) Industrial Chemicals (Consequential Amendment and Transitional Provisions) Bill 2017;
- (c) Industrial Chemicals (Notification and Assessment) Amendment Bill 2017;
- (d) Industrial Chemicals Charges (General) Bill 2017;
- (e) Industrial Chemicals Charges (Customs) Bill 2017; and
- (f) Industrial Chemicals Charges (Excise) Bill 2017.¹

1.2 Together the Bills reform Australia's system of industrial chemicals regulation and establish a new scheme to be known as the Australian Industrial Chemicals Introduction Scheme (AICIS).² The new scheme replaces and simplifies the existing National Industrial Chemicals Notification and Assessment Scheme.³

Background

1.3 In the 2015–16 Budget, the government announced plans to streamline the regulatory framework for industrial chemicals by focusing regulatory attention on the highest risk chemicals and seeking to remove barriers to lower risk introductions.⁴

1.4 The Assistant Minister noted in his second reading speech that the Industrial Chemicals Bill 2017 achieves the more streamlined regulatory approach foreshadowed in the 2015–16 Budget.⁵

Key provisions of the Industrial Chemicals Bill 2017

1.5 The Industrial Chemicals Bill 2017 has 10 Parts.

1 *House of Representatives Votes and Proceedings*, No. 57, 1 June 2017, pp. 810–811.

2 The Hon. Dr David Gillespie MP, Assistant Minister for Health, *House of Representatives Hansard*, 1 June 2017, p. 11.

3 The Hon. Dr Gillespie MP, *House of Representatives Hansard*, 1 June 2017, p. 11.

4 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2015–16*, p. 111.

5 The Hon. Dr Gillespie MP, *House of Representatives Hansard*, 1 June 2017, p. 11.

1.6 **Part 1** provides for preliminary machinery provisions and definitions, including the definition of an industrial chemical for the purposes of the legislation.

1.7 **Part 2** requires introducers of industrial chemicals to be registered, a Register to be kept and requires chemical introducers to pay a registration charge.

1.8 **Part 3** establishes a new system of risk-based categorisation of industrial chemical introductions.

1.9 **Part 4** provides a framework for the Executive Director to initiate evaluations of industrial chemicals or matters relating to industrial chemicals.

1.10 **Part 5** establishes the Australian Inventory of Industrial Chemicals and provides for the inclusion, variation or removal of an industrial chemical from the Inventory.

1.11 **Part 6** describes the information and reporting obligations of persons under the scheme and enables people to apply for confidential business information protection.

1.12 **Part 7** provides for monitoring, inspection and enforcement powers under the Regulatory Powers (Standard Provisions) Act 2014.

1.13 **Part 8** establishes the AICIS, the role and functions of the Executive Director and renames the Industrial Chemicals Special Account.

1.14 **Part 9** implements Australia's obligations under certain international agreements, such as the Rotterdam Convention, and enables bans or restrictions on industrial chemicals subject to certain international agreements.

1.15 **Part 10** contains miscellaneous provisions including a power to enable the Minister to make rules which will contain the operational detail of the scheme, and makes provision for applications and review rights. Part 10 also provides that animal test data should not be included with an application for a chemical to be used in a cosmetic product in some circumstances.

Key provisions of the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017

1.16 Industrial chemicals are currently regulated by the *Industrial Chemicals (Notification and Assessment) Act 1989* (IC(NA) Act). The Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 amends the IC(NA) Act to enable the early introduction of some aspects of the industrial chemicals reforms.

1.17 The Explanatory Memorandum to the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 provides that the changes in the Bill will:

...reduce unnecessary regulatory burden (by reducing reporting requirements) and commence the process of reducing regulation for lower

risk chemicals (by exempting polymers of low concern from notification requirements).⁶

1.18 Schedule 1 to the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 contains 12 items:

- Items 1–3 substitute the definitions of 'new synthetic polymer' and 'polymer of low concern' and allow for the introduction of these chemicals;
- Items 4–6 reduce the regulatory burden on introducers by relieving certain reporting requirements;
- Items 7–12 provide for transitional and administrative provisions relating to appeals and the registration charge payable by introducers.

1.19 The Explanatory Memorandum to the Industrial Chemicals (Notification and Assessment) Amendment Bill 2017 explains that the definition of 'new synthetic polymer' more closely aligns with international approaches and the amended definition of 'polymers of low concern' ensures that more polymers are exempted from reporting requirements.⁷

Key provisions of the Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017

1.20 The Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017 provides for consequential amendments and implements transitional arrangements from the IC(NA) Act to the new Industrial Chemicals Bill 2017.

1.21 No submitter raised concerns about the Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017.

Purpose and key provisions of the Industrial Chemicals (Customs) Bill 2017; Industrial Chemicals Charges (Excise) Bill 2017; Industrial Chemicals Charges (General) Bill 2017

1.22 The following bills (Charges Bills) are expressed in almost identical terms:

- Industrial Chemicals Charges (Customs) Bill 2017;
- Industrial Chemicals Charges (Excise) Bill 2017;
- Industrial Chemicals Charges (General) Bill 2017.

1.23 The Charges Bills impose a registration charge on the introducer of a chemical to the extent that the registration charge is customs duty, excise duty or neither a customs nor excise duty respectively.

6 Explanatory Memorandum, Industrial Chemicals (Notification and Assessment) Amendment Bill 2017, p. 1.

7 Explanatory Memorandum, Industrial Chemicals (Notification and Assessment) Amendment Bill 2017, p. 3.

1.24 The amount of the charge will be prescribed by regulations or worked out in a method prescribed by the regulations.⁸

Legislative Scrutiny

Parliamentary Joint Committee on Human Rights

1.25 The Parliamentary Joint Committee on Human Rights did not consider that any of the bills raised human rights concerns.⁹

Scrutiny of Bills Committee

1.26 Senate Standing Committee on the Scrutiny of Bills (Scrutiny of Bills Committee) gave initial consideration to the bills in *Scrutiny Digest No. 6 of 2017*.¹⁰ The committee raised a number of concerns about the Bills and requested advice from the Assistant Minister.

Industrial Chemicals Bill 2017

1.27 The Scrutiny of Bills Committee raised the following concerns about the Industrial Chemicals Bill 2017:

- that not all decisions are 'reviewable decisions' and the Explanatory Memorandum does not explain why some decisions are reviewable and others are not;¹¹
- that clause 175 abrogates the privilege against self-incrimination but the Explanatory Memorandum does not explain why it is necessary to do so; and¹²
- that clause 180 provides that rules may be made that would incorporate material that may not be freely available and may make the law difficult to know.¹³

Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017

1.28 The Scrutiny of Bills Committee raised concerns that subitem 50(3) empowers rules to be made that would modify the effect of the Act.¹⁴ The Scrutiny of Bills Committee accepted that the migration of chemicals from the existing inventory to the proposed inventory may require such a provision.

8 Industrial Chemicals Charges (Customs) Bill 2017, cl. 7(1).

9 Joint Parliamentary Committee on Human Rights, *Report No. 5 of 2017* (14 June 2017) p. 49.

10 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) pp. 35–44.

11 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 35.

12 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 36.

13 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 37.

14 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) p. 38.

1.29 The Scrutiny of Bills Committee also raised concerns that subitem 50(4) provides that subsection 12(2) of the *Legislation Act 2003* does not apply to rules made before 1 July 2020.¹⁵ The Scrutiny of Bills Committee was concerned that the Explanatory Memorandum did not explain why such a provision needed to be overridden when making transitional rules.¹⁶

Charges Bills

1.30 The Scrutiny of Bills Committee pointed out that there is no maximum charge or method to calculate a maximum charge in the Charges Bills. Accordingly, the committee requested advice from the Minister about why no limits had been imposed on the charges.¹⁷

Assistant Minister's response

1.31 The Assistant Minister provided a response to the Scrutiny of Bills Committee in relation to each Bill on 28 June 2017.¹⁸

Conduct of the inquiry

1.32 The Bills were introduced to the House of Representatives on 1 June 2017. Under the Senate's resolution of 10 May 2017, the committee was required to report to the Senate on 13 June 2017; however, the Senate approved two extensions of time for the committee to report on the Bills, first to 19 June 2017 and then to 8 August 2017.¹⁹

1.33 The committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 12 June 2017. A list of submissions to the inquiry can be found at Appendix 1.

1.34 The committee held a half-day public hearing on the Bills on 26 July 2017. A list of witnesses who gave evidence to the committee can be found at Appendix 2.

1.35 The committee thanks those submitters who contributed to the inquiry.

Notes on references

1.36 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

15 Section 12(2) of the *Legislation Act 2003* provides that a rule cannot apply before it is registered to the extent that it would disadvantage a person.

16 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) pp. 38–39.

17 Scrutiny of Bills Committee, *Scrutiny Digest No. 6 of 2017* (14 June 2017) pp. 40–43.

18 Scrutiny of Bills Committee, *Ministerial responses*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Ministerial_Responses (accessed 31 July 2017).

19 The Bills were automatically referred to the Senate Community Affairs Legislation Committee under a resolution of the Senate to refer time critical bills see: *Journals of the Senate*, No. 40, 10 May 2017, p. 1326. *Journals of the Senate*, No. 42, 13 June 2017, p. 1383; *Journals of the Senate*, No. 44, 15 June 2017, p. 1435.

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.

Labor Senators' Additional Comments

1.1 While not opposing the Committee's recommendation that the Bills be passed, Labor Senators remain concerned about some aspects of the Industrial Chemicals Bill and believe these concerns should be addressed with several amendments, as noted in the following comments.

Legislative approach

1.2 Labor Senators note with concern the lack of detail in these Bills and in the Explanatory Memorandum, with most of the detail being left to rules or regulations.

1.3 The Government is once again asking the Parliament to pass the Bills and trust it on the implementation.

1.4 Although the Department of Health (Department) has explained its reasoning for significant parts of the scheme to be provided for in rules, Labor Senators reserve their right to closely scrutinise the regulations and to disallow any which do not adequately ensure health and environmental protections are not diminished.

Exempted Introductions

1.5 Many stakeholders had concerns about the introduction of industrial chemicals without notification to the regulator through the 'Exempted Introduction' category, particularly as there would be no tracking of these introductions.

1.6 Whilst this category is for 'very low risk' chemicals, the potential exists that a chemical presently considered safe could be found, perhaps many years later, to be hazardous.

1.7 The Department's explanation that the introducer will need to notify the regulator that they have introduced chemicals in this category does not allay these concerns because the details about *which* chemicals were introduced under that category are not provided to the regulator.

1.8 When asked about how it would deal with a situation where, for whatever reason, this detail was inaccurate or not kept by industry, the Department referred to the record keeping requirements and penalties for failure to do so. As such, the response did not alleviate concerns about the difficulty in tracking potential exposures if these records are not able to be obtained from the introducer.

1.9 The Department also said that:

...our analysis shows that there would be more chemicals coming in the reported category, where people have to tell us before they introduce, as opposed to that exempted category, where there is no interaction with the regulator.¹

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

1.10 If that is the case and as industry would be required to keep records of the introductions, then Labor Senators believe that it would not be onerous on an introducer using the 'exempted introduction' category if they are required to provide an annual report to the regulator listing the name, volume and date of introduction of the industrial chemical.

1.11 This approach would preserve the principle of a register of industrial chemicals, provide greater transparency and should new information about the nature of a chemical come to light, make tracking exposures far easier.

Continuation of IMAP

1.12 The IMAP process received praise from many stakeholders. The Department's assurance to the committee that the IMAP process or something similar will continue and indeed be strengthened is helpful.

1.13 Nonetheless, the lack of detail in the Bill and the Explanatory Memorandum on this and other matters, Labor Senators would be further reassured if this commitment was included in the primary Bill.

Animal test data ban

1.14 Labor has a strong track record on animal testing, having introduced a private member's bill to Parliament in February 2016 to ban animal testing for cosmetics in Australia, and also ban the manufacture and importation into Australia of cosmetics that have been tested on animals elsewhere. While this Bill responds to pressure from Labor and advocates on this issue, concerns have been raised.

1.15 The animal welfare sector raised concerns that the ban on the use of animal test data for cosmetics has been drafted to be very narrow and that it contains a loophole which would allow animal test data to be used in industrial chemicals introduced for multi end use.

1.16 Labor Senators believe that an amendment to introduce a two track system, as suggested in Be Cruelty-Free's submission, will be more comprehensive than the legislation as currently drafted.

1.17 As the Government agrees in principle with banning the use of animal test data in cosmetics, and the Department's own submission suggests that there are few cases where its ban would not apply, the proposed two track approach would seem unlikely to create a significant regulatory burden whilst providing much more confidence in the system.

Reliance on Risk Managers

1.18 In its submission the AMWU noted that:

If risk managers had acted on NICNAS recommendations significant operational problems with the exposures to fire fighting foams would have been avoided²

2 AMWU, *Submission 8.1*, [p. 2].

1.19 Labor Senators believe that better information on the uptake of the regulator's recommendations will better inform policy decisions and therefore call for the legislation to be amended to require the regulator to obtain and make publically available, an annual report on the outcome of recommendations flowing from assessments.

Senator the Hon Lisa Singh

Senator Murray Watt

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.humaneresearch.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).

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

- 1** Haztech Environmental
- 2** Australian Council of Trade Unions
- 3** CropLife Australia
- 4** Public Health Association of Australia
- 5** Victorian Trades Hall Council
- 6** Cancer Council Australia
- 7** Accord
- 8** Australian Manufacturing Workers' Union (plus a supplementary submission)
- 9** Dow Chemical (Australia) Pty Ltd
- 10** Chemistry Australia
- 11** Cosmetics New Zealand
- 12** ShireBiz (plus an attachment)
- 13** National Toxics Network
- 14** Department of Health
- 15** Be Cruelty-Free Australia
- 16** RSPCA

Additional Information

- 1 Comments, from Public Health Association of Australia, received 24 July 2017
- 2 Clarity on interface between REACH and the Cosmetics Regulation, from Be Cruelty-Free Australia, received 26 July 2017
- 3 Driving the World Toward Better Science, from Be Cruelty-Free Australia, received 26 July 2017
- 4 Correspondence from Be Cruelty-Free Australia to NICNAS Reforms, from Be Cruelty-Free Australia, received 26 July 2017

Answers to Questions on Notice

- 1 Answers to Questions taken on Notice during 26 July public hearing, received from Department of Health, 2 August 2017

APPENDIX 2

Public hearings

Wednesday, 26 July 2017

Victorian Parliament, Melbourne

Witnesses

Public Health Association of Australia

MOORE, Professor Michael, Chief Executive Officer
HLUBUCEK, Dr Joe, Member

National Toxics Network

IMMIG, Ms Joanna Liza, National Coordinator

Cancer Council Australia

SLEVIN, Mr Terry, Chair, Occupational and Environmental Cancers Committee
GLASS, Associate Professor Deborah, Expert Member, Occupational and Environmental Cancers Committee

Australian Manufacturing Workers Union

MAXFIELD, Mr Benjamin, OHS Campaigns Organiser, Australian Council of Trade Unions
MUSOLINO, Ms Renata, OHS Website and Information Organiser, Victorian Trades Halls Council

Be Cruelty-Free Australia

STUART, Ms Hannah, Campaign Coordinator
BEYNON, Ms Nicola, Head of Campaigns, Humane Society International (Australia Office)

Royal Society for the Prevention of Cruelty to Animals

GOODFELLOW, Dr Jed, Senior Policy Officer

Accord Australasia

BROCK, Mr Craig, Policy and Public Affairs Director

Chemistry Australia

READ, Mrs Samantha, Chief Executive Officer
LEE, Mr Bernard, Director Policy and Regulation

Department of Health

SHAW, Mrs Gillian, Assistant Secretary

RUMBLE, Dr Sarah, National Industrial Chemicals Notification and Assessment Scheme